

2689

No. 12867

United States
Court of Appeals

for the Ninth Circuit.

see vol. 2688

WESTERN AIR LINES, INC.,

Petitioner,

vs.

CIVIL AERONAUTICS BOARD,

Respondent.

Transcript of Record
In Two Volumes

Volume II
(Pages 463 to 891)

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THE NINTH CIRCUIT
FILED

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PAUL P. O'BRIEN
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Civil Aeronautics Board.

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Civil Aeronautics Board.

(Testimony of A. W. Stephenson.)

Redirect Examination

By Mr. Bennett:

Q. This agreement to arbitrate, the machinery is now in process; is that right?

A. That is right.

Q. Isn't it true that there is a time limit upon the matter?

A. That is right. The Board must meet on the 28th, and must have a report, a recommendation back ready to submit if the Examiner will accept it, by the 13th of December.

Q. Do you know if application has been made for the arbitrator—I mean the neutral—— [2246]

A. That is right. We have already asked that the neutral be provided.

Q. Now, this recommendation that comes out of this arbitration is for anybody in this case who wishes it; isn't that true? United, Western, the C.A.B.?

A. That is right.

Q. It isn't your understanding that this decision would be binding upon anybody but the parties to the arbitration; isn't that right?

A. That is right.

Mr. Bennett: Nothing further.

Mr. Kennedy: Mr. Examiner, may I ask for one other thing?

Examiner Wrenn: All right.

(Testimony of A. W. Stephenson.)

Recross-Examination

By Mr. Kennedy:

Q. Do you have now a written question or questions to be submitted to the arbitrator? Has that been agreed upon?

A. We have a written question.

Q. Do you have that with you?

A. Yes, I believe I have.

Examiner Wrenn: Is he, the witness, to do it, Mr. Bennett?

Mr. Bennett: No, he isn't.

Mr. Kennedy: Well, I don't care, so long as it is made available, Mr. Examiner.

Examiner Wrenn: Well, you do have the question, Captain?

The Witness: We have the procedure, completely outlining [2247] the problems.

Examiner Wrenn: I know that, but I understood Mr. Kennedy to ask you if you had a specific question that the arbitration board is to be asked to decide.

Mr. Kennedy: As I understand the mechanism, you agree in writing what the issue is. I would like to see what the written question is.

The Witness: I have it here with me in Washington. I don't believe that——

Mr. Kennedy: I wonder if we could ask counsel for A.L.P.A. to make that available to us.

Mr. Bennett: I will endeavor to make it available.

Examiner Wrenn: All right.

You are excused.

(Witness excused.)

Examiner Wrenn: Now, back to the request of Mr. Reilly for the minutes of these meetings.

Do I understand your position to be that you don't know whether there is anything in that way, and you object to furnishing it?

Mr. Bennett: I am not in a position to agree to furnish it. I don't know whether there are written minutes. That I don't know about. I can let Mr. Reilly know.

Examiner Wrenn: Would you like to have over the period of noon recess to look into that and give me an answer to it one way or the other?

Mr. Bennett: Yes, this afternoon I can do that.

Examiner Wrenn: Let us take a five-minute recess.

(There was a short recess taken.) [2248]

Examiner Wrenn: All right, gentlemen, let's have your attention.

Call your next witness, Mr. Bennett.

Mr. Bennett: Mr. Unterberger, please.
Whereupon,

S. HERBERT UNTERBERGER

was called as a witness by and on behalf of the Air

(Testimony of S. Herbert Unterberger.)

Line Pilots Association, and, having been first duly sworn, was examined and testified as follows:

Examiner Wrenn: Will you give your name to the reporter?

The Witness: S. Herbert Unterberger, 510 Standard Oil Building, Washington, D. C.

Direct Examination

By Mr. Bennett:

Q. What is your business or occupation, Mr. Unterberger? A. I am a research economist.

Q. Did you give the name of your business to the reporter?

A. I am director of research of the Labor Relations Information Bureau in the Standard Oil Building.

Q. How long have you been engaged in this character of work? A. In excess of 15 years.

Q. Now, will you state to the Examiner your qualifications?

A. Well, I am presently director of research and a partner in the Labor Relations Information Bureau, which is a private economic research organization handling research and [2249] analysis for a wide variety of clients that vary from labor unions, trade unions, trade associations, and so forth. I have been engaged in that work since early in 1947.

Prior to that time I was head economist with the Office of War Mobilization and Reconversion.

(Testimony of S. Herbert Unterberger.)

During the war I was director of the Analysis Division of the War Labor Board. Prior to the war I was economist with the Railway Retirement Board, Pennsylvania Department of Labor and Industry, and carried on a variety of economic studies in the field of labor utilization and labor productivity for several Government agencies dating back to the middle of 1935.

I hold degrees from the Wharton School of Finance and Commerce, University of Pennsylvania, and the graduate school of that same institution.

Q. Did you prepare A.L.P.A. Exhibits 2 through 16 that were filed in this cause previously?

A. They were prepared under my supervision. I take it you mean Exhibits 2 through 16 that were attached—that were filed at some time prior to yesterday morning?

Q. That is right. A. That is right, yes.

Examiner Wrenn: Off the record here.

(Discussion off the record.)

Examiner Wrenn: Back on the record.

Go ahead.

Q. (By Mr. Bennett): From what source of material were these exhibits compiled? [2250]

A. They were all derived from the reports made by the various carriers to the Civil Aeronautics Board, or reports compiled by the Civil Aeronautics Board, or in the case of one exhibit—No. 16—the source of that was the schedules published in the Official Guide of the Airways, the Air Traffic Guide,

(Testimony of S. Herbert Unterberger.)

and the Official Air Line Guide. All of those things are really one publication under a successive variety of names.

Let me change that: A variety of successive names.

Q. And what is the ultimate source of this material? Does it come from the companies themselves? I mean the original source of the material?

A. Yes.

Q. They are reports made to the Government by the companies; is that true?

A. Except for that one exhibit where apparently the information is filed with the publishers of the Official Air Line Guide.

Q. By whom? By the companies?

A. I assume by the companies.

Q. Yes.

A. Now, will you look at Exhibits 2 through 16, Mr. Unterberger?

Mr. Reilly: Excuse me a minute.

Where did he say he got the information for this material? What was the source?

Would you read back that answer?

(The answer was read.)

Mr. Reilly: All you are talking about now are the [2251] statistics themselves and not any argumentative matter that might appear in the summaries or explanations? You surely didn't get these explanations out of any official document.

The Witness: Obviously.

(Testimony of S. Herbert Unterberger.)

Mr. Reilly: That is all I wanted to know.

Q. (By Mr. Bennett): You are speaking of——

Mr. Reilly: Exhibits 2 to 16, I am talking about.

Mr. Bennett: You can strike my question.

Q. (By Mr. Reilly): Will you refer to these Exhibits 2 through 16 now, Mr. Unterberger, and tell the Examiner what they show, please?

A. Mr. Examiner, the Air Line Pilots Association asked me to review the available statistical materials to determine what light they might throw upon this basic question you ask: Whether any of the employees of Western Air Lines had been adversely affected as a consequence of the transfer of Route 68 and certain physical properties to United Air Lines.

I have, as you have seen, derived a great part from sources there which are freely available to the C.A.B., and placed them in such a way as I think provide certain illumination to that problem.

By way of introduction—a very short one, let me assure—I operated with this basic assumption: That the job of an air line pilot is essentially that of operating a piece of aircraft a certain number of miles or a certain number of hours. That constitutes his job essentially. Hence, it follows from that that the employment opportunities on a specific air line are in turn determined by the number [2252] of aircraft-miles available to fly, the number of aircraft-hours available to operate the air line.

Starting from that point the first thing we have here, Exhibit No. 2, presents a tabulation of the

(Testimony of S. Herbert Unterberger.)

number of aircraft-miles flown on Western Air Lines, and it shows it both in terms of the total number of aircraft-miles and the total number of revenue aircraft-miles.

In reviewing that exhibit, it might be significant to start our consideration around the period where the transfer of Route 68 occurred. That takes us down—the transfer, of course, specifically occurred September 15. These data are monthly. The month of September is a very confused situation, because in part of that month Western Air Lines was operating Route 68, and in another part of the month it was not.

However, if we go back a couple of months from there and look at the first column, entitled “Total Number of Aircraft-Miles,” on Exhibit No. 2, we find that in the early part of that year the total number of aircraft-miles operated by Western Air Lines over their entire system was in the neighborhood of, oh, it was in excess of 600,000. In the neighborhood of 625,000, let us say. Actually, it arose to such high points as 741,000 in July and 745,000 in August.

Now, we follow along and find immediately after the transfer of Route 68 in September a very dramatic decline, a decline down to 537,000 in October. As a matter of fact, it continued to decline lower and lower. In January, 1948, it was down to 492,000. In February, 1948, it was down to 484,000. That might not be so different. It is a three-day shorter month. [2253]

(Testimony of S. Herbert Unterberger.)

The conclusion is inescapable, of course, that at least chronologically prior to the operation of Route 68 this air line was operating substantially larger, great number of aircraft-miles than subsequent thereto.

Now, there might be a variety of explanations for that. There was some talk of seasonality here yesterday. That would happen toward the end of the year. To avoid the problem of seasonality, therefore, and to make an adequate comparison of what the total number of aircraft-miles available to fly on this air line were, before Route 68 was transferred and after Route 68 was transferred, it might be well to take—I have taken, as a matter of fact, for purposes of comparison, a six months' period running February through July of 1947.

Now, to anticipate my story a little bit, it is important to recognize why I chose that particular six months' period.

It will be remembered that yesterday there was some discussion about the number of schedules that were flown, and it was clear there that this air line had stabilized its operation over Route 68 at approximately four schedules a month during that period. It had wandered around ahead of that point, and had declined substantially subsequent to that point. But during that period we had a relatively stable situation. So that if we compare the operation of total number of aircraft-miles in a six months' period, February through July, 1947, with the same six months' period, February through

(Testimony of S. Herbert Unterberger.)

July, 1948, we find that there is a net decline of 14 per cent in the total number of aircraft-miles flown. [2254]

Thus, subsequent to the transfer of Route 68 this air line was essentially 14 per cent smaller in terms of its operation than it was prior.

When an air line shrinks in size—to go back to our basic proposition, when the number of aircraft is changed, the number of employment opportunities must fall. There is no other result that can accrue.

Here we find a decline of 14 per cent in the size of this air line. Hence, we must find a decline in terms of employment opportunities available on this air line, and from which the conclusion follows, of course, that there was a decline in the employment opportunities to a given number of pilots, the pilots that are adversely affected.

I have also put on this table the number of aircraft revenue-miles. As a matter of fact, that throws some illumination on another point that was being discussed here yesterday.

While the pattern which I have indicated in terms of total number of aircraft-miles is in greater part reproduced in the number of revenue aircraft-miles, that is, there is a substantial decline in the number of revenue aircraft-miles immediately subsequent to the transfer of Route 68, and in the long run subsequent to the transfer of Route 68. That is, if we use 1948 and compare the same six months' period we find that there was a decline not of 14 per cent

(Testimony of S. Herbert Unterberger.)

in the number of miles, but when one deals with the number of aircraft-miles there was a decline of 16 per cent.

However, there is a little more that I think that we can derive from from a comparison between total aircraft-miles and [2255] revenue aircraft-miles.

For this purpose I regret that the mathematics was not all completely done, but we can do it very quickly. For this purpose, if we go back to 1946 and compare for the month of June revenue aircraft-miles and total aircraft-miles we find that revenue aircraft-miles are 82,000 below total aircraft-miles.

In the next month they are 72,000 below. In the next month they are 32,000 below.

In other words, there were 82,000 aircraft-miles flown non-revenue. Now, there are a variety of reasons why miles are flown non-revenue. These are certainly not the kind of miles that an air line would prefer to fly.

There are always some standard reasons for that. Most of them, as I understand it, surround the problem of training pilots—getting them qualified. However, 82,000 in comparison to 699,000 is a large number of non-revenue aircraft-miles.

Now, let us take the same months in 1947 and see what the story is. In July, 1947, we find the difference between total aircraft-miles and revenue aircraft-miles is only 22,000. That as compared to

(Testimony of S. Herbert Unterberger.)

82,000 the year before. In August we find that the difference between revenue aircraft-miles and total aircraft-miles is only 12,000 as compared with 72,000 the year before. In September the difference is 25,000 as compared with 32,000 the year before.

I think it should be pointed out here that in 1946 there was a training problem. That was the year in which Route 68 was being introduced. That was the year when pilots were [2256] qualifying on new routes, and on new equipment.

In 1947 there was not that problem. Hence, we find that that is one of the important reasons for the decline in non-revenue aircraft-miles.

We come now to 1948. We find that to be awfully interesting. We find in June of 1948 there was only a difference of 30,000 non-revenue aircraft-miles. In July, however, it became 80,000. In August it became 70,000—back to the kind of non-revenue aircraft-mile situation that one found back in 1946.

Now, there are many reasons for that, but one of them suggests itself very strongly, which is that that was the year in which this company was introducing Convair equipment, and a great number of aircraft-miles were flown in the training of pilots on that new kind of equipment.

Now, I think this suggests to me an item of some significance, and that is that there is without a doubt an ebb and flow in terms of the employment opportunity on most of the air lines, and on this one specifically. There is a seasonality problem. There

(Testimony of S. Herbert Unterberger.)

is a cut-back in schedules, an amplification of schedules and a cut-back in schedules, and certain pilot employment opportunities are added and subtracted. But that is not apparently the only reason for adding and subtracting employment opportunity.

Pilot employment opportunities were added in 1946 for an operational reason—the extension of Route 68. That was one of the important reasons.

So that the decline in pilot opportunities, the lay-offs in October, towards the end of 1946, are in part, and perhaps [2257] a substantial part, due not to cut-backs at all, but, rather, to the fact that Route 68 was running and operating efficiently.

Even more important, however, is 1948 where there was a cut-back, a so-called seasonal—allegedly seasonal decline in the fall of 1948. And no doubt there was some seasonal decline in the fall of 1948. However, these statistics suggest—this very large increase in non-revenue hours—suggests that there was another reason, and a very important one, and that is that the Convair training program was over and hence we no longer needed pilots to operate the route and be trained on the route. We only needed one set of pilots to operate the route once they were trained. So that the cut-backs in 1948, these statistics suggest that the cut-backs in 1948 were not of the same order, not the same breed of task entirely as the cut-backs in 1948. It was not just in the normal operation of the air lines, just the usual thing that happens, the calamity that occurs every

(Testimony of S. Herbert Unterberger.)

fall; but at least there was some other thing that occurred. They got rid of all of these non-revenue aircraft-miles. And statistics show that they were a sizable number.

So that we find two things as a result of our analysis of Exhibit No. 2. We find, firstly, that this was a declining air line after the elimination of Route 68. We find it shrank 14 or 16 per cent, somewhere in that neighborhood. We find in addition that the pattern of employment, the seasonal pattern of employment—rise in the spring and decline in the fall—while it repeats itself to some extent, is significantly different from year to year, and is attributable to [2258] different reasons. We find, of course, that the pilots were adversely affected because the air line is a smaller air line.

Now, if I may, I would like to turn to Exhibit No. 3. It will be remembered that I set down as a basic proposition at the beginning, my own basic proposition, that is, that the job of a pilot can be measured both in terms of the number of miles and the number of hours that he operates aircraft.

As a matter of fact, the number of hours is of special importance because there is a legal limitation and the number of hours that are available sets the upper limit within—let's put it the other way: The number of hours really sets the lower limit on the number of pilots you can use. In other words, if you are running 86 hours, the legal limit for the number of pilots you can use is two. And so it goes. Eighty-five hours is the maximum num-

(Testimony of S. Herbert Unterberger.)

ber of hours you can use one pilot. So to be sure the number of hours limits the number of pilot employment opportunities.

Now, may I make one point parenthetically before we turn to Exhibit No. 3. That is, in discussing the exchange of this air line, I now turn to the consideration of 1949 data which were not on the exhibits as originally submitted. I was asked, and I actually asked for the privilege of adding to these exhibits to bring them up to date.

It will be remembered that when the exhibits were filed initially they were filed many, many months ago. I feel somewhat frustrated in having more current detail and not being able to use it.

Examiner Wrenn: Is that the only difference between the [2259] exhibits originally distributed and the ones you just submitted? The 1949 data is added?

The Witness: That is right.

Q. (By Mr. Bennett): As a matter of fact, the ones you submitted yesterday are identical down to that date; is that correct?

A. Yes. For your information, they are the old exhibit with this tacked on.

Examiner Wrenn: All right.

The Witness: If we go into 1949, one finds that the Western Air Lines shrank a little further. The total again, using my basic comparison of February to July, remembering that the Civil Aeronautics data I cannot get much closer—I can get through September—well, I can get through August. I am

(Testimony of S. Herbert Unterberger.)

told that the September reports are somewhere in the house. They are not accessible to me.

However, if we use February through July again, we find this air line shrank a little further. 1949, the same six months' period, the total number of aircraft-miles was 18 per cent below what it was in 1947 when Route 68 was operated. The number of revenue aircraft-miles was 19 per cent below what it was in the same six months' period in 1947 when Route 68 was operated.

Now, if I may, I would like to turn to Exhibit No. 3, the number of aircraft-hours.

Here, too, we take as our point of reference September, 1947, and we will see that in that month 3,614 hours and six minutes were flown in United Air Lines. We start at that point and go [2260] back——

Mr. Reilly: What air line?

The Witness: Western Air Lines, I am sorry.

If we start at that point and go back, we find that the number of aircraft-hours approximated, averaged, about 3,700, I would say. Immediately thereafter there were substantial drops, 3,200, 3,100, 3,200, 2,900. The pattern is not essentially different. There is a slight difference in magnitude. The pattern is almost identical.

Again, let us compare the six months' period in 1947—the period of relative stability under the operation of Route 68. February through July, as compared to the same period in 1948, what do we find? We find the same thing, same conclusion

(Testimony of S. Herbert Unterberger.)

reinforcing it. A decline of aircraft-hours of 12 per cent, revenue aircraft-hours of 14 per cent.

In 1949 there were further drops, a decline in total aircraft-hours of 15 per cent below 1947 and revenue aircraft-hours of 25 per cent.

So that again we find that even using the measure of aircraft-hours there is a substantial shrinkage of the air line; that aircraft-hours which determine the employment opportunities, minimum employment opportunities, are down. They are down 12 to perhaps as much as 25 per cent, depending on what measure you use. It is relatively unimportant as to what measure you use. They all show that they are down by significant proportions.

That is the principal conclusion that one draws from analyzing the number of aircraft-hours. It reinforces the conclusion in terms of aircraft-miles. It is perhaps more conclusive in terms of demonstrating the decline in employment [2261] opportunities, and the consequent adverse effect on pilots.

May we turn to Exhibit 4. Exhibit 4 shows that the number of passenger-miles flown over Western routes. Now, the reason for going into the question of passenger-miles is that while initially the number of aircraft-miles and number of aircraft-hours determines the number of employment opportunities, in the last analysis it is relatively the number of passengers carried, and business done over those routes, that determines whether those employment opportunities will persist.

Many air lines have operated that number of

(Testimony of S. Herbert Unterberger.)

aircraft-miles and passenger-miles for a short period of time; I doubt that any of them can do that very long.

Now, when we look at passenger-miles we find again, if we start in September of 1948 and look before that point, we find that the company was averaging, oh, 16,000 or 17,000 passenger-miles——

Q. (By Mr. Bennett): You mean 1946?

A. 1947. Beginning in 1947.

Immediately thereafter there was an inescapable decline. It dropped from 19 down to around 8, 8½—8,500,000 passenger-miles. In other words, there was a drop here of about almost 50 per cent in passenger-miles, in amount of business done.

Let's take April of 1947 where the number was 16.2 million. Let's take April of 1948 where the number was 8.8 million.

As a matter of fact, if we use again this six months' [2262] period which I have used for the purpose of reference throughout here, we find between 1947 and 1948 a decline of 40 per cent in the number of passenger-miles. In the number of revenue passenger-miles we find a decline of 41 per cent.

So that we have the situation here where not only did this air line shrink in size in terms of number of miles and number of hours, but it shrank even more substantially in terms of the amount of business it was doing, the amount of business which ultimately has to support the pilot employment, and, for that matter, total employment.

(Testimony of S. Herbert Unterberger.)

There can be little doubt that when an air line drops 40 per cent of its business after the transfer of one of its routes that its pilots are adversely affected.

We turn now to Exhibit No. 5, which shows the available seat-miles operated over Western Air Lines. I will summarize that one very quickly. By and large it demonstrates the same pattern. It demonstrates a significant decline after the transfer of Route 68—a decline that still persists. There was a decline of 32 per cent between the six months' period 1947 and 1948, and even the 1949 after Western Air Lines added to its equipment in some measure by the Convair program there was still in terms of available seat-miles 26 per cent less in that six months' period than there was in the same six months' period when it was running Route 68.

Now, I have used each of the available measures in terms of the total situation at Western Air Lines, and it might be said that this was somewhat redundant. They all proved the same thing. That is true, they all demonstrate approximately the same thing in varying degrees. The importance, of course, [2263] of using each of the measures are two: One of them is thereby one avoids any charge of selecting his measure. These are all there are, really, in terms of the available statistics. Secondly, they reinforce, at least to my mind, the conclusion. Regardless of which measure is used, the answer is the same. No one of them, no operational reason which could have affected one of them is selected

(Testimony of S. Herbert Unterberger.)

out and a conclusion drawn, but the operational reasons are allowed to affect all of them. And the inescapable conclusion follows, being that it is a smaller air line.

Now, not only is it a smaller air line but it is a slightly different air line.

In connection with the transfer of Route 68 not only was the route itself disposed of, but four aircraft, four sizable aircraft, the largest aircraft the company had, were disposed of, together with the route.

Examiner Wrenn: Didn't Western Air Lines concede originally that it was going to be a different air line and a smaller air line? Wasn't that the whole theory urged in this whole case?

Mr. Renda: That is not in issue here, Mr. Examiner. I agree with you.

The Witness: I take it you want my comment on that point.

Examiner Wrenn: No. I just fail to see where that issue is here, because, as I get it, your testimony here demonstrates what Mr. Drinkwater said back in May, 1947, was going to happen.

The Witness: Well, if I may, I will make one observation [2264] on that point. That is, that from my understanding of what Mr. Drinkwater said, he said something about their being a smaller air line. He, however, was quite specific about saying that there would be no lack of employment opportunities. We are getting to that point.

Examiner Wrenn: I don't disagree with you on that point.

(Testimony of S. Herbert Unterberger.)

The Witness: We are getting to that point. However, we have been demonstrating several things—exactly what kind of a smaller air line it is, and——

Examiner Wrenn: Well, my remark was really directed to your point there that you came to the conclusion that it was a smaller air line. I couldn't see there was any issue on it.

Is this a good point to stop for lunch?

Mr. Bennett: Yes.

Examiner Wrenn: All right, we will recess until 2:00 o'clock.

(Whereupon, at 12:35 p.m., a recess was taken until 2:00 p.m. of the same day.) [2265]

Afternoon Session—2:00 P.M.

Examiner Wrenn: All right, gentlemen, let us continue.

Whereupon,

S. HERBERT UNTERBERGER

resumed the witness stand, and was examined and testified as follows:

Direct Examination

(Continued)

By Mr. Bennett:

Q. All right, Mr. Unterberger.

A. Just before we stopped for lunch, Mr. Examiner, you raised a question. I have thought about

(Testimony of S. Herbert Unterberger.)

it a little while and I would like to amplify my answer.

Examiner Wrenn: Go ahead.

The Witness: The basic question was whether I wasn't saying pretty much the same thing that has been admitted, that this is now a smaller air line.

I think in general there may be some confusion in regard to the use of the word "smaller." As I understand the testimony previously stated to this Board, the word "smaller" refers to a smaller number of miles. It does not cover as many route-miles as it used to. I am also led to believe that it is smaller as related to employment opportunities. As a matter of fact, the burden of the exhibits I have discussed and analyzed so far are in the measure of employment opportunities, and the things that measure employment opportunities, namely, miles and hours as significant to a smaller air line.

Now, turning to Exhibit No. 6. Exhibit 6 shows the number of revenue aircraft-miles flown by type of aircraft, and [2266] the three principal groups operated in this air line are DC-3's, DC-4's, and, more recently, the Convair 240.

Here, if you will, let us observe specifically the column headed "DC-4 Passenger." That shows the number of passenger revenue aircraft-miles flown by DC-4's. They, of course, are the kind of ships that were flown on Route 68.

Now, here we find isolated, narrowed down, some of the principal effects of the transfer of Route 68. Again starting with our point of reference Septem-

(Testimony of S. Herbert Unterberger.)

ber, 1947, and going back from that point, we find that the volume of revenue aircraft-miles flown on DC-4's is up in the neighborhood of 380,000 per month. Immediately thereafter, and immediately after the transfer, the decline is very substantially, falling consistently since then — not necessarily month by month. There is a consistent trend downward since then.

A comparison of the six months that we have been using for reference in 1947 to the same six months of 1948 of DC-4 aircraft indicates a decline of 44 per cent from 1947 to 1948. If we go to 1949 we will see that much fewer miles were flown in DC-4 aircraft. More of them, of course, were sold off. The decline there is 83 per cent below 1947.

This, of course, comes as no surprise, since together with the transfer of Route 68 a significant proportion of the total number of DC-4 aircraft owned by the company were transferred as well.

The principal significance from the standpoint of the adverse effect on the pilots is that the remuneration in the flying of DC-4 aircraft was higher than the flying of any other type of aircraft on that line, on Western Air Lines, at [2267] the time of the transfer, and I am told since, although the remuneration on Convairs is apparently very close to it now. So that we find in the transfer of Route 68 not only did the pilots lose all of the things we are talking about so far in terms of employment opportunities, but the jobs that were left to them were in great part jobs that paid much less. They were flying,

(Testimony of S. Herbert Unterberger.)

much less remunerative aircraft, thus less employment opportunities. But the jobs that were left were not as good as the jobs they previously had. And that persists until this day.

If we may turn now to Exhibit 7, we find that the same kind of distribution, that is, the number of aircraft—we show the number of aircraft hours by type of aircraft. Now, by and large the conclusions drawn from this are the same, and that is that the volume of DC-4 flying declined precipitously, and is continuing to this day to be declining. The decline in hours, as a matter of fact, exceeds the decline in miles. The decline in hours from the six months' period of 1947 to the same period of 1948 approximates 58 per cent. Let me check these figures.

I am sorry, that is not correct. I have looked at the wrong date there.

The decline in hours is slightly less than the decline in miles. The decline in hours is only 41 per cent. The decline in miles is 44 per cent.

However, the decline of 41 per cent—the differences are not significant. The difference between 41 and 44 is not very great. The important point is, of course, that the flying of DC-4 aircraft fell by well over one-third. [2268]

The same conclusion, of course—the adverse effect on the pilots in terms of their opportunity to fly larger and more remunerative aircraft.

Exhibit 8 demonstrates essentially the same con-

(Testimony of S. Herbert Unterberger.)

clusion, but reinforces it with respect to passenger-miles.

Now, there, there is a much greater decline in terms of passenger-miles on DC-4 aircraft. A decline for the six months' period in 1947 to the six months' period in 1948 was 58 per cent. More than half the DC-4 business—more than half the DC-4 business no longer existed after the transfer of this route.

Exhibit 9 we will turn to now. Exhibit 9 goes to a point that has been considered several times. It will be remembered that representations were made to this Board that all or most of the lost employment opportunities on the Los Angeles-Denver route would be picked up by the extension of the San Francisco-to-Seattle route. The facts on that, the data on that, are shown on Exhibit 9.

On Exhibit 9 we will see that the Los Angeles-Denver route in 1947, let us say, was operating between five and seven million revenue passenger-miles a month. That is, prior to August.

Now, the so-called substitute route from the standpoint of employment opportunity, the San Francisco-to-Seattle route in August started out with 3,800,000 revenue passenger-miles. That is significantly below the number of revenue passenger-miles flown on Route 68 any month subsequent to almost its inception, not quite.

Go back to June, 1946. In the months of April and May [2269] Route 68 was hardly operating at full capacity. As a matter of fact, as I understand it, the airplanes were not available.

(Testimony of S. Herbert Unterberger.)

Now, I will take one little hedge on that. The month of February is a little bit below on Route 68 the month of February on Route 63. But it must be remembered that the month of February is three days shorter than August.

However, the level attained the very first month in which the so-called substitute equivalent employment opportunity route was obtained was from thereon never attained. It dropped in September to 2.9; October, 1.9; November, 1.9; 2.7, 1.9, 1.8, 2.0, and it is still right down here in 1949 at the bottom of that table operating at a level substantially less than half what Route 68 was operating at when Western was operating Route 68.

The obvious conclusion, of course, is that the San Francisco-Seattle route which was supposed to offer the equivalent employment opportunities never even offered them at the beginning, and since then has been less and less adequate in terms of offering employment opportunities.

To tie this down to specific comparisons, the Route 63, San Francisco-to-Seattle, in terms of the revenue passenger-miles, fell 61 per cent below the Los Angeles-Denver route, using the same six months' periods for comparison, in 1948; and fell 65 per cent below in 1949.

By now it is not even one-third as good. The San Francisco-Seattle route is not even one-third as good as Route 68 was in 1947.

Incidentally, it might be observed in passing, that

(Testimony of S. Herbert Unterberger.)

some [2270] of the other routes of national air lines are not as good.

Mr. Renda: You mean Western.

The Witness: Western Air Lines.

Mr. Bennett: Let the record so show.

Examiner Wrenn: That seemed to me to be an unnecessary lot of noise about an obvious slip of the tongue.

Go ahead.

The Witness: The drop in other routes was significantly smaller—there was some drop, to be sure—than the drop that resulted from the transfer of Route 68 and the substitute, or so-called substitute, of Route 63.

Exhibit 10 directs itself to this question: To be sure, Western Air Lines is an air line which is now operating at a significantly lower level than it did in 1947. But are not all air lines operating at a significantly lower level, and is this phenomena peculiar to Western Air Lines? If all are operating at that same level, obviously the problem on Western is a more universal problem.

Hence, we have on Exhibit 10 in the very first column the number of revenue passenger-miles carried by all the domestic air mail carriers. These data are derived from the recurrent reports of mileage and traffic prepared by the Civil Aeronautics Board.

What do we find there in terms of all air line carriers in the United States, including Western? Well, if we start with our point of September, 1947,

(Testimony of S. Herbert Unterberger.)

we find prior to that point that all air line carriers were operating in the neighborhood of, let us say, 500,000,000 revenue passenger-miles. Subsequent, in the next year, there is not very much [2271] difference. On the average it comes out about the same.

Let us tie that down. Using the same six months' period which we have used all through here for comparison, we find that in terms of revenue passenger-miles there is a decline of but 3 per cent from 1947 to 1948 for all domestic air mail carriers. This is to be compared with a decline of 41 per cent on Western for the same period.

By 1949, using the same six months' period for comparison, there is an increase of 13 per cent for all domestic air mail carriers. This is to be compared with a decline on Western by 1949 of 42 per cent.

Thus we have the conclusion that a situation on Western is almost diametrically opposed to the situation that is found on all air mail carriers. The total domestic aircraft industry, at least as measured by revenue passenger-miles, either held its own in 1948 or almost its own, or increased. Thus employment opportunities, as a whole, as measured by this, held their own pretty well. On Western there was a drop of in excess of 40 per cent—using the same measure.

Turning to Exhibit No. 11, the same comparison is made in terms of available seat-miles. There we find that—again using the same six months—between 1947 and 1948 there was an increase of 10

(Testimony of S. Herbert Unterberger.)

per cent in available seat-miles, and by 1949 an increase of 27 per cent. This is to be compared with the same data in the next column, which reflects the situation of Western, showing a decline of 32 per cent by 1948, and a somewhat smaller decline of only 26 per cent by 1949.

However, the situation, if we use available seat-miles as the criterion, is while Western fell off 27 per cent the [2272] total air lines of the United States increased 26 per cent.

These data, I think, also go specifically to the point of the adverse effect on Western's pilots of the transfer of Route 68. That was a principal phenomena that occurred on Western's lines during those periods.

Now, the next question I asked myself in making this analysis was: Well, if Western fell off substantially, and the plea here is to transfer pilots, what was the situation on United? Did United fall off as much? Was there room for absorption of these pilots on United? Hence, in Exhibit 12 I have attempted to compare the situation on Western with the situation on United.

Now, we know what the situation on Western is—a substantial decline. What was the situation on United?

If you look at Exhibit No. 12 where the revenue aircraft-miles flown by each system are shown, we find that there apparently was between 1947 and 1948 roughly the revenue-miles were about the same on United. As a matter of fact, the precise com-

(Testimony of S. Herbert Unterberger.)

parisons for the same six months' period shows there might have been as much as a one per cent increase on United. There was no decline, certainly. There was some increase, part of which might have been attributed to the fact that they incorporated Route 68 into their system.

The effect on Western, Western being a smaller line, losing a substantial leg of its system, was very substantial, as we have seen. The effect on United, which is one of the giant lines, adding to its system doesn't add too much percentagewise.

By 1949, to complete the picture, United's [2273] revenue aircraft-miles did fall somewhat. They are down by my calculation 7 per cent.

However, even the latter decline on United in no way compares to the substantial declines on Western. Initially, however, there was no decline on Western. Quite the opposite, there was an increase.

I will deal rapidly with Exhibits 13, 14 and 15, and make essentially the same comparisons, using each of the other measures we have become familiar with in the past. The conclusions there are substantially the same. Slight differences in the percentages, but by and large the conclusions are the same.

In terms of seat-miles, United added substantially to its seat mileage. It no doubt added larger aircraft during that period, which is likely to be what accounts for it.

We pass now to Exhibit 16. Exhibit 16 goes to this same question—the question of whether the pilots who had been operating Route 68 on Western

(Testimony of S. Herbert Unterberger.)

Air Lines could have been absorbed directly by the operations of United after it took the route over. And it goes to the question quite directly. The past three or four exhibits went to it via the overall figures. This goes to it by pin-pointing the specific route, Route 68. And as I read that table, here is what it shows:

We start at the very top of the table, in the very first column, when Western Air Lines had the Denver-Los Angeles route. It started out very modestly, with one schedule a day. It built that up over the months to a maximum of six schedules a day, as reported in the Official Air Lines Guide. That dropped somewhat until by February they were operating [2274] four schedules a day, and apparently had stabilized from there on out at four schedules a day. The initial period appears to be a period of experimentation to see how much traffic the route could support, and by February it appears that the experimentation period was pretty much over and there was a stability introduced. That stability was only upset in August when the air line transferred off of that route two of its aircraft.

The situation in September is really only reflective of a couple of weeks that the air line operated this route in September.

So that we find that after a period of initial experimentation this route was stabilized at about four trips a day.

When United took over the route they, too, apparently went through a period of experimentation to

(Testimony of S. Herbert Unterberger.)

see how much traffic the route would carry, and started out with six trips a day. Four trips Denver to Los Angeles, and included as well the Chicago-Los Angeles non-stop and the New York-to-Los Angeles with an operational stop. Thereafter, they operated eight trips a day, four and one directly from Denver to Los Angeles and the others over the more extensive route.

They apparently stabilized for a while at five trips a day, but by 1949 they were back up to six and seven.

Through most of this period, through 14 of the 24 months, roughly, that are represented here—25 months—United Air Lines *Air Lines* operated as many trips over Route 68, specifically Route 68, Denver to Los Angeles, as Western had operated over that route when their situation was [2275] stabilized. Apparently there was that much employment offered by the route. The route offered by Western offered just as much employment—the route as operated by United offered just as much employment as the route as operated by Western.

Now, if we also consider the fact that United was running non-stop from Chicago, the argument might be made out that it offered more employment. It is not necessary to make that argument. It is only necessary to point out that the route now, from the standpoint of employment of pilots, offered the same employment opportunities as when Western operated the route.

It seems likely that there would have been no

(Testimony of S. Herbert Unterberger.)

difficulty, on the basis of this evidence, if the pilots had gone with the route.

Now, in the subsequent presentation there is also an Exhibit 17. Exhibit 17 is a summary of the comparison of the six months' period I have referred to as we have gone along. It is based entirely on the accumulation of the data in the preceding exhibit. It was not submitted initially. However, I describe it to this extent, that it is the same data summarized for that six months' period and percentages shown for a simple quick glance at the total situation. And, if I may, I would like to make really just one observation about it: That is, if we look down as far as line 24 on that exhibit, all of those data reflect the situation on Western Air Lines, and we will find that the predominant changes from 1946 to 1948 are predominantly downward changes with substantial magnitude. The changes deal with 1947 in the operation of DC-3 aircraft where there was a slight increase—leave out the [2276] word “slight”—there was an increase in miles, increase in operations.

The plusses, of course, are found elsewhere. The plusses are found with respect to the total aircraft system of the United States, and the operation of United Air Lines.

Mr. Examiner, I believe that completes my analysis of these data.

Mr. Bennett: In order to keep our exhibits straight, may I have this marked for identification as A.L.P.A. Exhibit 17-A?

(Testimony of S. Herbert Unterberger.)

Examiner Wrenn: All right. That is the summary sheet to which the witness has just referred.

Mr. Bennett: Yes.

Examiner Wrenn: All right, that will be marked Exhibit 17-A.

(The document referred to was marked for identification as A.L.P.A. 17-A.)

Mr. Renda: Mr. Examiner, so that there can be no mistake as to Western's position at the time these data are offered in evidence on behalf of A.L.P.A., I want to put the Examiner on notice at this time that I propose to move that all data and all testimony dealing with 1949 not be received in evidence. It was submitted to us in late time and we have had no opportunity to analyze it, check it, and prepare cross-examination on it.

I will renew that motion at the appropriate time.

Examiner Wrenn: All right.

Q. (By Mr. Bennett): Mr. Unterberger, I show you Exhibit 18, for [2277] identification, and I ask you to state if you also prepared that exhibit for filing in this cause?

A. Yes. These are excerpts from a longer report which I prepared. I am prepared to sponsor this exhibit.

Q. And in the preparation of this Exhibit 18 you made a study of the Burlington formula, did you not? A. Yes.

Q. And you are now prepared to sponsor this exhibit? A. Yes.

Q. And to be cross-examined upon any of its contents? A. Yes.

(Testimony of S. Herbert Unterberger.)

Mr. Bennett: You may cross-examine.

Examiner Wrenn: Mr. Crawford, do you have any questions of the witness?

Mr. Crawford: Yes. I would like to ask the witness a few questions in order that I may understand the theory back of this exhibit.

Mr. Bennett: Which exhibit is that?

Mr. Crawford: Exhibit No. 18. [2278]

Cross-Examination

By Mr. Crawford:

Q. This is captioned "The inapplicability of the Burlington Formula to the current air line situation."

Now, do I understand that to mean that your theory of this Exhibit 18, that the Burlington Formula would not be applicable, do you mean that it would not be applicable to all employees other than the pilots, or are you just referring here to the pilots?

A. You are entirely correct. This exhibit reflects the situation with respect to pilots entirely. I have not investigated the situation as it might apply to non-pilot employees.

Q. Then it is clearly understood that your reference all through the document, where you say the Burlington Formula—on page 4, now, Mr. Unterberger, you have this caption: "Why the Burlington Formula is totally inapplicable to the current air line situation." Now, I assume in your reply

(Testimony of S. Herbert Unterberger.)

wherever you reply to the inapplicability to the air line situation, you are limiting that to the pilots?

A. Yes, that is correct.

Q. Then it is not your intention to say, or you cannot at this say, that the Burlington Formula would not be applicable to the other employees, to this Board?

A. No, I have not investigated it.

Mr. Crawford: That is all.

Examiner Wrenn: Mr. Renda, you may cross-examine the witness. [2279]

Q. (By Mr. Renda): When were you employed by Air Line Pilots Association to undertake this study, Mr. Unterberger?

A. Air Line Pilots Association has been a client of mine now for several years. Your question—let me clarify your question more specifically. Are you referring to Exhibits 2 through 16, or Exhibit No. 18?

Q. When were you first asked to undertake the study which you have testified to in its entirety?

A. To the best of my recollection, my original conference with respect to a study of the Burlington Formula, and its applicability to the air line situation, and to the situation of the air line pilots, shall I say, was initially discussed with me around the end of last year. Perhaps there is a date here.

It was initially discussed with me and the research work was done on it around the end of last year and the beginning of this. I don't know now

(Testimony of S. Herbert Unterberger.)

exactly the date I made the complete study of the pilots——

Q. I didn't ask you just about Exhibits 17 or 18——

A. I haven't finished my reply.

Q. I asked about the whole thing.

Examiner Wrenn: Go ahead, Mr. Unterberger.

The Witness: Exhibits 2 through 17 were prepared—the original conference on them would be early this year some time. They were prepared immediately prior to their submission, and my guess is—I don't now remember the date of the submission—March or April, thereabouts, in the spring of the year, and they were prepared roughly in the four or five weeks' period preceding that submission. [2280]

Let me put it another way: They were prepared at the time—I don't have my office records to give the exact date, but they were prepared at the time of the last available data filed with the Civil Aeronautics Board, which was for September, 1948.

Q. (By Mr. Renda): The letter of transmittal indicates these were filed with the Board June 7, 1949. Is it your brief answer that they were prepared on or about that time?

A. No, sir. My answer is precisely as stated. They were prepared prior to that time——

Q. All right. We won't have to review it again.

Are you retained by Air Line Pilots Association, or are you their employee?

A. They are clients of mine.

(Testimony of S. Herbert Unterberger.)

Q. And how long have you had A.L.P.A. as a client of yours?

A. Roughly, since early in 1948, perhaps earlier than that.

Q. Do you specialize in research work for air lines? A. No, sir.

Q. Have you ever undertaken any study for any scheduled air carrier in the United States with respect to their operations, traffic and cost?

A. No, sir. But may I give a broader explanation of my answer: The Labor Relations Information Bureau has as its clients both employer and employee groups. As a matter of basic policy, however, we never have an employer and employee group in the same industry. Having accepted the Air Line [2281] Pilots Association as a client, we would not accept any air line as a client.

Q. Unless the air line was able to pay more than the Air Line Pilots Association, of course.

A. I resent that, sir.

Mr. Bennett: I object to that and ask that it be stricken.

Examiner Wrenn: Strike it.

Q. (By Mr. Renda): You have given us a lot of data that seems to indicate you made a thorough and complete study of Western's system, and you sure know what is wrong with Western. How many airplanes did Western own in 1947?

A. I do not have those data here.

Q. Do you have them with you?

A. No, sir.

(Testimony of S. Herbert Unterberger.)

Q. Do you know? A. I can find out.

Q. You don't know at this time.

How many airplanes did they own in 1946?

A. I do not now have data with me or in my memory as to the precise number of airplanes Western owned at any time.

Q. How many route-miles did Western operate in 1946?

A. I do not have those data with me now. I do not know how many they were at any time, offhand.

Q. How many route-miles were they certificated for in 1946?

A. I do not have available with me now, nor am I prepared to state out of my memory, any data with respect to [2282] Western Air Lines that are not shown on these exhibits.

Q. Now, you testified at great length as to all these various data contained in these Exhibits 2 to 17, and I have never seen so many figures, and I think you have done a pretty good job of recitation, and it seems obvious that——

Mr. Bennett: Mr. Examiner, I object to him arguing with the witness. If he has a question, I suggest that he ask it.

Mr. Renda: You will get more questions——

Examiner Wrenn: All right, let's not argue. Finish your question.

Q. (By Mr. Renda): Do you know how many miles Western was certificated to operate in 1947?

A. I stated in my answer to the previous question that insofar as data not covered by these

(Testimony of S. Herbert Unterberger.)

exhibits, I am not prepared to draw them out of my memory. I do not know them without reference to the available statistical data. I would not have known these data without reference to the sources.

Q. Now, you knew you were going to be subjected to cross-examination on these exhibits and these data, did you not? A. Yes, sir.

Q. So you came unprepared.

A. No, sir.

Mr. Bennett: I object to that.

Mr. Renda: Mr. Examiner, this is entirely proper. This man has submitted a lot of data here, and I want to know what he knows about [2283] this.

Examiner Wrenn: You can test him. But your characterization as to his preparedness or unpreparedness is your own. You don't expect the witness to agree with that.

Mr. Renda: I agree.

Examiner Wrenn: Go ahead.

Q. (By Mr. Renda): Do you know what Western's net operating loss or profit was in 1946?

A. My last answer I will repeat: Insofar as statistical data with respect to Western Air Lines is concerned, I am not prepared to provide them out of my memory. I am not even prepared to provide those data which are in my tables, out of memory. I refer to the tables. And when asked questions, I refer to the original data.

Q. Do you know what United's break-even mail pay was in 1947?

(Testimony of S. Herbert Unterberger.)

A. I refer you to my previous answer, sir.

Q. Do you know what their load factors were in 1946?

A. I refer you to my answer to the previous question.

Mr. Bennett: My suggestion to Mr. Renda is that in cross-examination we have put on a witness who introduced certain evidence into the record. Mr. Renda should confine his cross-examination to that. Obviously, this man wouldn't know and hasn't all that data with him. His cross-examination should confine itself to the direct, and I suggest that questions outside of that are not proper here.

Examiner Wrenn: I don't think the questions are necessarily outside of the direct. He is testing the capacity of the witness, and he intends, of course, to attack the testimony, [2284] presumably, on the theory that the witness is not qualified to analyze Western.

Mr. Bennett: You mean because he doesn't know the different things this man is questioning him about?

Examiner Wrenn: I presume that is what he has in mind. I am certainly not prepared to cut him off of that. That is his privilege.

Mr. Bennett: Is that what—

Mr. Renda: You can make your own assumptions.

Mr. Bennett: All right.

Q. (By Mr. Renda): On what date in 1946 did Western start its operation of Route 68?

(Testimony of S. Herbert Unterberger.)

A. That was in May of 1946, to the best of my knowledge.

Q. Do you know how many employees Western had on its pay roll in May, 1946?

A. Not without reference to the available information on that subject; no, sir.

Q. Do you know what the available ton-miles were that Western was flying in May, 1946?

A. Not without reference to the original data, no.

Q. Do you know what Western's mail pay was in May, 1946?

A. In doing a research job it is always essential to start out with basic data. One does not rely on one's memory for basic statistics. It is very unlikely that I or many other people could possibly have at command such statistics, and did I have them in my memory I would be loathe to [2285] recite them under oath for fear of making an error. That is not to say that I do have them. I do not have them. But in doing a careful research job I cannot rely upon my memory for those figures.

Q. Mr. Unterberger, let me ask you this question: In your opinion, Western Air Lines in 1946 was comparable in size to what carrier or groups of carriers?

A. I could not answer that question without researching into the field, first.

Q. You don't know whether Western Air Lines was a large carrier, small carrier, or medium-sized carrier?

(Testimony of S. Herbert Unterberger.)

A. I do know on the basis of the data here it was significantly smaller than United.

Q. Significantly smaller. How much?

Mr. Bennett: You mean percentage, or how many people? In what regard do you mean?

Mr. Renda: I don't know what he means. He will be subject to redirect.

Mr. Bennett: I submit the question is not complete.

Mr. Renda: Mr. Examiner, I will save you the difficulty of ruling on that.

Examiner Wrenn: It is perfectly all right; it would not be difficult. But go ahead.

Q. (By Mr. Renda): Comparing different carriers on an available ton-mile basis in 1946, can you tell me with which carrier Western would compare favorably in size?

A. I am not exactly sure by what you mean compare favorably. I think you mean [2286] compared.

Q. Compare the same.

A. Well, I wouldn't rely on memory for that, of course. I can tell you, of course.

Examiner Wrenn: Why don't you pick out one of the comparisons you have used there? Revenue-miles or aircraft-miles, or whatever test you used there.

Mr. Bennett: And do what with it?

Examiner Wrenn: Make whatever answer he wishes. He was asked the question in what way. I suggest that if he wants to answer, that he use as

(Testimony of S. Herbert Unterberger.)

a basis one of the elements of comparison he made back in his exhibits.

The Witness: I would be very happy to, Mr. Examiner, but the difficulty is I do not have similar accurate information with respect to other air lines. I only have it with United.

With respect to United, if we take revenue aircraft-miles, and we use the year of 1947, let us say, we find that United in that year was a line that was operating in the neighborhood of five million. Western in that year was a line operating in the neighborhood of six hundred thousand, which means that Western was a line about 12 per cent the size of United—using that measure.

We could use the other measures we have here, and I am sure they wouldn't come out very much different.

Examiner Wrenn: There is no need to go into that.

Q. (By Mr. Renda): Mr. Unterberger, that does not answer my question. You have in here made certain comparisons of Western Air Lines with all the domestic air mail carriers, and I want to know [2287] if you know from your own knowledge—your own study you claim to have made in this case—just what carrier Western is the same as in size on the basis of the available and ton-miles basis.

A. I have not compared Western with any other carrier. I have compared Western as—and I submit it is a legitimate comparison—with all of the

(Testimony of S. Herbert Unterberger.)

air mail carriers. The question I posed here, and the question these data are designed to answer, is how does Western compare with the rest of the air line systems in the United States.

Q. Do you think it is fair to compare Western with a transcontinental carrier?

A. I have not done that, sir.

Q. Do you think it is fair to compare Western to a group of carriers of which a transcontinental air line is a part?

A. I have taken all of the domestic carriers. I do think it is proper to compare Western with what the statistics call the universe. It is proper to compare any individual with the universe.

Q. Well, I am not interested in what the statistician thinks should be compared with the universe, or thinks is proper. We are trying to find out some facts here.

Let's go to 1947. In making the various conclusions that you have testified to with respect to the situation in 1947, did you give consideration to Western's size as compared with the so-called medium-sized carriers?

A. My comparisons are all right here. I did not compare Western with any other specific carrier except United. [2288]

Q. Isn't it a fact that the comparison you made presents the most favorable comparison for the testimony you have given?

A. As a fact of the matter, I did not know that, whether it is the most favorable or least favorable.

(Testimony of S. Herbert Unterberger.)

I have not made any other comparisons, and, hence, couldn't know it.

Q. Are you in any way familiar with Western's routes, the cities they serve?

A. Insofar as they are described in official documents. I know where they run. It is right here.

Q. Do you know what routes they were operating in 1947?

A. I only know the three principal ones. I have somewhere, I believe, a tabulation of the smaller routes. The three principal ones are shown on one of these exhibits.

Q. Western operates a route called—three routes called 52, 19, and 13. That is from Los Angeles up to Salt Lake City, on up to Great Falls, and to Lethbridge. Have you any idea just how heavy the traffic is on that particular route?

A. I know about from Salt Lake to Lethbridge.

Q. Is that a dense route, trafficwise?

A. What is your definition of dense route?

Q. Well, you answer it and then——

Mr. Bennett: Unless he understands it how can he answer it?

Q. (By Mr. Renda): You don't know?

A. I don't know what your definition of "dense" is. [2289]

Q. You don't understand my question?

A. No.

Q. Do you know what are the passenger revenue-miles that Western generated in 1947 between Salt Lake City and Great Falls on its Route 19?

(Testimony of S. Herbert Unterberger.)

A. They are not differentiated in my data here. They are in the so-called "Other Classification."

I might point out that those data to which you are now referring are not broken down on the reports to the Civil Aeronautics Board, else they would be. They are merged in the other classification in the C.A.B. reports.

Q. In your consideration of this problem, the preparation of these data, and the testimony you have given here, have you given any consideration to the problem of management with respect to conducting an operation which is economical and profit-producing?

A. You mean, have I given any consideration to it, have I thought about should management have a profit-producing operation—I am not clear about your question as to what you mean by having given consideration to the profit to management.

Q. You have testified here time and time again on these exhibits with respect to this opportunity for employment. In your opinion, is opportunity for employment something that is frozen once it is attained; or is it subject to economic forces?

A. It is subject to all kinds of economic forces.

Q. What other things is it subject to?

A. It is subject primarily on an air line to the number [2290] of aircraft-miles and the number of aircraft-hours available. Now, those things in turn are subject to many things. The number of aircraft-miles and number of aircraft-hours flown may be a function of the volume of consumer purchasing

(Testimony of S. Herbert Unterberger.)

power; it may be the function of a number of aircraft accidents, as to whether consumers are ready to ride the air lines; it may be a function of particular personal preferences; it may be a function of an advertising campaign; it may be a function of all sorts of things.

Q. All right. Let's take February and March, 1947, when Western Air Lines was operating four schedules on Route 68 between Denver and Los Angeles. Do you know what the load factors were on those schedules?

A. Not without reference to the reports.

Q. Do you know what they were in April and May of the same year?

A. Not without reference to the reports.

Q. Do you know what they were in June and July?

A. The same answer.

Q. Do you know whether there was a change in schedules brought about by economic forces?

A. I am not sure what you mean by "economic forces." Do you mean all of the things I recently enumerated?

Q. No, I am not adopting your testimony, Mr. Unterberger.

A. Then I don't understand your question.

Q. Do you know what an air line takes into consideration in arriving at a schedule—what factors?

A. I would believe that they take into consideration first off how much business they can do. [2291]

Q. All right. What else?

A. Well, I could visualize many.

(Testimony of S. Herbert Unterberger.)

Q. They have to take into consideration costs, wouldn't they? Isn't that most important?

A. I don't know what the most important is. I would expect that they would worry about costs. I am not sure about what they——

Q. It is very apparent that you are not worried about costs in your testimony.

Examiner Wrenn: That is an observation of yours, Mr. Renda. There is no need to expect the witness to answer it.

Mr. Renda: I am sorry.

Q. (By Mr. Renda): Now, let's turn to some of these exhibits, your Exhibit No. 2, number of aircraft-miles.

Do you know that in February of 1947 the total revenue-miles was slightly better than—by the way, these are millions, aren't they, not thousands?

A. Yes, I guess they are. I am not—I think you are right.

No, that is not right. These are thousands. These are thousands.

Q. That is right, they are thousands.

A. They are millions when we deal with passenger-miles.

Q. You notice in February, 1947, it is slightly better than 596,000, and in September of that same year 591,000-plus.

Would you say that is pretty stable? [2292]

A. I regret that I have difficulty with the word "stable." What do you mean by "stable"?

Q. Is there a substantial variation there between

(Testimony of S. Herbert Unterberger.)

the number of revenue-miles operated in February, 1947, and September, 1947? That is simple.

A. Yes. There is a difference there of roughly 22,000, but——

Q. Is that——

Mr. Bennett: Let him finish the answer, please.

The Witness: I want to talk about the subject “stability”——

Q. (By Mr. Renda): Well, now, you just answer my questions.

A. Well, sir, I am doing that.

Mr. Bennett: Mr. Wrenn, I submit that the witness has the right to finish his answer.

Examiner Wrenn: Let the witness finish his answer.

The Witness: The instability being that in February this air line was operating Route 68 at four schedules a month. In September part of the month it was operating Route 68 and part of the month it was not. Even for the part it was operating it was operating it at a reduced number of schedules. At the same time, however, it was instituting Route 63 and instituting Route 63 at an exceedingly high level, and one that had never subsequently attained. Hence, the term “stability” is peculiarly inappropriate to those figures.

Q. (By Mr. Renda): Let's look at October, 1947. We have no question of Route 68 schedules in that month, and the figure is 527,552. [2293] And compared to February, 1947, it indicates a decrease

(Testimony of S. Herbert Unterberger.)

of approximately 41,000 revenue aircraft-miles. Is that correct?

Now, would you say that is an unusual cut-back? Do you say that difference is substantial, so as to bring about a diversionary effect, an adverse effect on pilots?

A. Well, there is a cut-back there—there is a difference between October and February of roughly 8 per cent. However, I think it is important to observe that using February is using a very curious month. That is two days short—two days on thirty is roughly 8 per cent, isn't it? So that a comparison between February and October, using just the global figure of 569 and 527 is exceedingly inaccurate. As a matter of fact, if February were a 30-day month, and had the additional two days worth of flying in there, the drop would not be 8 per cent, but perhaps twice that much.

Q. Well, now, do you know what schedules Western was operating in February, 1947, as contrasted to October, 1947?

A. My data here only shows the schedules operated with respect to Route 68, and that is clear. They were operating four in February and none in October.

Q. Let's turn to Exhibit 3.

By the way, why do you choose the period February to July as the period to form the basis for all your comparisons percentagewise?

A. I explained that, sir. The reason is that February to July was the period when Route 68 in 1947

(Testimony of S. Herbert Unterberger.)

was operating at the most stable level. They were operating four schedules every one of those months. Apparently they had shaken down [2294] to that level. And it gives us a half-year period there with Route 68 not a problem. It was neither building up or sloughing off. It appeared to be stabilized at four schedules a day.

Q. Do you know what brought about Western's reduction in schedules on Route 68 in August, 1947?

A. The reports they made to the Civil Aeronautics Board revealed that they transferred two airplanes.

Q. Do you know what was the aircraft utilization on Western's DC-4's in July, 1947?

A. I know I don't have that data here.

Q. Do you know what they were in August, 1947—what utilization was on those airplanes, DC-4's?

A. No. Again I do not have that data available right now.

Q. These airplanes that were transferred, who were they transferred to?

A. If my memory serves correctly, they were transferred for use over the Los Angeles-Seattle route.

Q. So that they would still be utilized in the Western's system?

A. Why, of course.

Q. Do you know what date the Board issued a decision consolidating United's routes and American's routes and T.W.A.'s routes so they could fly non-stop from Chicago to Los Angeles?

A. No, sir.

(Testimony of S. Herbert Unterberger.)

Q. Did you take that into consideration in evaluating whether Western's management was prudent in starting to reduce [2295] schedules on Route 68?

Mr. Bennett: I don't think that at any time he indicated that Western was prudent or imprudent, or that he made any investigation with reference to that subject, and I take it that is not a proper cross-examination of the witness.

Examiner Wrenn: Mr. Renda, I will let him answer whether he took that into consideration when preparing the exhibit.

The Witness: Is that the question, Mr. Examiner? I don't remember it exactly.

Examiner Wrenn: Do you want to rephrase the question?

Mr. Bennett: Read it.

Mr. Renda: I can rephrase it, Mr. Examiner.

Examiner Wrenn: Go ahead.

Q. (By Mr. Renda): You testified you were not familiar with the Board's decision that resulted in consolidating American, T.W.A., and United's routes so they could fly non-stop from Chicago to Los Angeles.

A. I testified I didn't know the date.

Q. You are familiar with the decision?

A. That they came out with such a decision?

Q. Yes. A. Yes.

Q. I am asking you whether you took that factor into consideration in determining whether there was justification for Western decreasing its schedules in August from four to two on Route 68?

(Testimony of S. Herbert Unterberger.)

Examiner Wrenn: I don't know whether he has testified as to the justification. If he hasn't, he can say so. [2296]

The Witness: That is precisely the answer I want to make. I gave no testimony, I passed no value judgment—

Q. You didn't take that factor into consideration?

A. No, sir. I passed no value judgment on the question of Western's justification or prudence, for that matter.

Q. Now, Mr. Unterberger, if you are so sure that the normal operating period was between February and July, 1947, when the schedules operated amounted to four, how do you explain that United Air Lines, after the route was transferred, and after about six or seven months' experience in the peak season, the summer, June, July, August, and September, 1948, only operated two schedules?

Examiner Wrenn: Read that question back, please.

(The question was read.)

Mr. Bennett: May I say this: I don't think he said he was sure about anything. He told the reason he had taken those months.

Examiner Wrenn: Let him answer. If he has testified that, he can say so, and if he didn't he can straighten it out. There isn't any intention here, Mr. Witness. of making you testify anything you

(Testimony of S. Herbert Unterberger.)

did not testify to. If counsel misstates you have no hesitation in saying so.

Mr. Renda: I had no intention of misstating his testimony.

The Witness: Of course I did not say that I was sure the six months' period, February through July, reflected the normal operating experience. Quite the opposite. What I said was that I used those six months as a basis for [2297] comparison because they appeared to me to be the best six months for comparison purposes. And the reason they appeared to me to be the best six months for comparison purposes is that it appeared on the basis of this data that Western had stabilized its operation of Route 68 at four schedules a month. And I used that six months for one purpose, and one purpose only, that is, to compare that six months with an identical six months' period in other years.

Now, it is an essential to do that, essential to compare identical six months' periods in other years, to avoid any distortions due to seasonal influences, and that avoids distortion due to seasonal influences.

Mr. Renda: Mr. Examiner, this witness has not answered my question at all. He just rambles on.

Examiner Wrenn: All right, the witness has testified as to what he testified to.

Now, go ahead with your question.

Q. (By Mr. Renda): Mr. Unterberger, you may perhaps have taken exception to the characterization of whether you were sure. But the fact still

(Testimony of S. Herbert Unterberger.)

remains that in every comparison you have made the basis you have used is the months of February to July. That is correct, isn't it?

A. No, not in every comparison.

Q. Let's take Exhibit 17.

A. That is every comparison on Exhibit 17, sir?

Q. Yes. A. Yes.

Q. All right. So you have used February-July because [2298] in your opinion that is indicative of the best basis for a comparison.

A. I will accept that statement if you remove the word "indicative."

Q. So, then, we are not in disagreement?

A. I am not sure about that.

Q. As to the period February to July, you are satisfied that in your opinion that was the normal operating period? A. No, sir.

Q. Then what was the normal operating period?

A. Mr.—

Q. You tell me what was the normal operating period, if it wasn't between February and July, 1947?

A. Mr. Examiner, I don't think that in my entire testimony I ever used the term "normal operating period." I did not testify to "normal operating period." I am not exactly sure what is meant by a normal operating period. Those words have very specific meaning. This is a dynamic situation, and I am not sure that there is a normal operating period in a dynamic situation.

However, we do have to make comparisons, and

(Testimony of S. Herbert Unterberger.)

I selected the period which seemed to me on the basis of reasons I stated—very cogent reasons, I believe—to be the best period for the purpose of making comparisons. I have not characterized them, sir.

Q. Then, let's take the best period you have used, that was February to July.

A. Best for the purpose of comparison. [2299]

Q. Yes. A. Yes.

Q. Now, answer my question as to why you would use that as the best period for comparison, when as indicated by your Exhibit 16 United Air Lines after operating for seven or eight months, and having had that experience, started out in June by operating only two schedules per month—per day, that is—on Route 68 between Denver and Los Angeles?

Examiner Wrenn: Read the question back to him as corrected by counsel.

(The question was read.)

The Witness: Well, we have to make a correction of facts, first. They operated three schedules, according to my Exhibit 16. One is a cargo trip.

Q. (By Mr. Renda): I will correct the question again: Two passenger trips. Western never operated cargo schedules. We are comparing the two.

A. I am awfully sorry, but could I ask to have the question again?

Examiner Wrenn: Read the question.

(The question was read.)

(Testimony of S. Herbert Unterberger.)

The Witness: My reasons for using that period are the same as I said before. They are, to repeat if need be, that this is the period when Western Air Lines apparently had stabilized its operation at four trips a day. The fact that United wanders around and sometimes had four trips and sometimes had three, while a fact, does not seem to me to mean that the selection of that six months' period is inappropriate. [2300] It is a fact.

Q. Well, doesn't your Exhibit 16 definitely show, Mr. Unterberger, that even though United may have been optimistic when it first started to operate Route 68 in September, and had four passenger schedules, that it obtained experience combined with the fact that it was flying non-stops from Chicago to Los Angeles, which is an influencing factor here, it finally cut down to two schedules, and would you say then that two schedules was all that segment could support?

A. Well, I think it is essential to point out that United thought it could support four—five initially—four initially and then five; four and a cargo trip. And then three and a cargo trip; and then two and a cargo trip; and more recently with even additional knowledge and far more experience it now thinks it can support three and a cargo trip. And it has now for many months—one, two, three—seven of them by the time of the last report available to me, apparently feels it can support three and a cargo trip. And, in addition, it feels that Chicago-Los Angeles can support a great deal more.

(Testimony of S. Herbert Unterberger.)

Q. Well, Chicago-Los Angeles, other than that it may be related to the question of traffic that is moving over the Route 68—I mean, it is not in issue here as to the number of schedules.

A. To be sure, except insofar as it relates to your question.

Q. Do you know what United's load factors were on the four passenger schedules it operated in November-December, 1947, January, February, and March, 1948? [2301]

A. I don't have those data available here.

Q. In making your computation of route-miles, did you consider the Denver-Los Angeles route for the entire distance, or did you limit that segment only to the part that Western actually did not continue to operate, that is, from Las Vegas to Denver?

A. I am not sure about that.

Examiner Wrenn: Just a minute. I didn't hear the last of that answer.

You added part of an answer.

The Witness: That part of the answer was that I didn't understand the question.

Examiner Wrenn: All right. Proceed.

Q. (By Mr. Renda): Are you familiar with Western's Route 13? I will tell you what it is: It starts from Los Angeles—for the purposes of this discussion—goes to Las Vegas and continues to Salt Lake City. A. Yes.

Q. Now, you are familiar with Route 68. That was the route from Denver that stops at Grand Junction, Las Vegas, and Los Angeles. So that both

(Testimony of S. Herbert Unterberger.)

68 and 13 parallel the segment between Las Vegas and Los Angeles. Do you have that picture?

A. Yes.

Q. My question is, in computing the route-miles in these various exhibits, did you measure the Route 68 full mileage from Los Angeles to Denver, or consider only the mileage between Las Vegas and Denver?

A. No, these were reported to the Civil Aeronautics [2302] Board, as I remember, Los Angeles to Denver. I think you are referring to my Exhibit 9, is that right?

Q. That is one of them, yes.

A. That was reported to the C.A.B. as Los Angeles to Denver, not Las Vegas to Denver.

Q. In making comparisons such as you have made in this case, do you think you should take into consideration the fact that Western continues to serve that segment between Los Angeles and Las Vegas by reason of the fact that it is part of another route and therefore if that same traffic is there it will operate the schedules necessary to carry that traffic?

A. Those data are included in this data. They are under the so-called "Other" classification. Table 9 includes the total revenue passenger-miles operated by the system. There is nothing excluded.

Q. Well, in your Exhibit 4, is that included in there?

A. Well, that is the total Western system. Obviously it has to be included. There are no exclusions

(Testimony of S. Herbert Unterberger.)

on Exhibit 4. As a matter of fact—well, that is not passenger-miles. The columns on Exhibit 9 will add up to total revenue passenger-miles.

Q. What I want to make sure of is, in these computations you have regarded Route 68 as a route from Los Angeles to Denver and not only as a route from Las Vegas to Denver.

A. I think the answer is yes, but let me make absolutely sure.

Q. All right.

A. The data you people reported to the Civil Aeronautics [2303] Board, Los Angeles to Denver, are the data that are found in Exhibit 9—I guess Exhibit 9 only. That is the only place where I have a breakdown. So that seems to me to include the route from Los Angeles to Denver.

Q. All right. Now, let us turn to Exhibit No. 11. Here you compared Western with all domestic carriers. Have you made any study as to how Western would compare on this same basis with a group consisting of Chicago & Southern, Braniff, Delta, National, Mid-Continent, and Continental?

A. No. I have only made the comparison between Western and all domestic carriers.

Mr. Renda: That is all, Mr. Examiner.

Examiner Wrenn: Mr. Reilly, have you any questions?

Mr. Reilly: Yes, Mr. Examiner.

Q. (By Mr. Reilly): Mr. Unterberger, will you tell us a little more about your experience? Where did you go to school?

(Testimony of S. Herbert Unterberger.)

A. I am a graduate of the Wharton School of the University of Pennsylvania.

Q. Commerce?

A. Commerce. And I have a Master's Degree from the graduate school of that same university.

Q. Did you go to work for this Labor Relations Information Bureau immediately you left school?

A. Oh, no, sir.

Q. Will you tell us a little more about what you did then?

A. Well, yes, sir. I went to work initially on leaving school for the Federal Government. Initially I worked on [2304] problems of employment—actually, it was work relief in those days. They were setting up employment projects. We were establishing employment projects and methods of wage payment.

Q. What agency was it, Mr. Unterberger?

A. The agency names change. It was, I think, Federal Employment Relief Agency, and quickly became the Works Progress Administration, and may have become something else.

Q. Was that Mr. Frank Walker's set-up?

A. No, the late Corrington Gill.

Q. When did you become associated with the Labor Relations Information Bureau?

A. Actually, I was one of the people who organized Labor Relations Information Bureau. I am a partner in that.

Q. That is about 15 years ago?

(Testimony of S. Herbert Unterberger.)

A. No, that was only about three years ago. That was roughly in March of 1947.

Q. Who are some of the other partners?

A. Max Malin is the name of the other partner.

Q. Have you ever done any work in the field of commercial air transportation, such as the exhibits you are presenting here, for the same purpose you are presenting the exhibits here?

A. I have analyzed Civil Aeronautics Board data previously, and analyzed C.A.B. data for the Air Line Pilots Association on several occasions.

Q. For what purpose?

A. Well, I made similar analyses and made similar presentations before Civil Aeronautics Board Trial Examiners, [2305] and recently before the National Mediation Board in representation matters.

Q. Did you ever work for an air line?

A. No, sir.

Q. Did your partner ever work for an air line?

A. No.

Q. I take it, then, you nor your partner have ever had any experience in air line traffic, air line scheduling; is that correct?

A. I don't know what you mean by experience. I feel by now I have had fairly substantial experience.

Q. Are these exhibits an indication of your experience? Tell us what these exhibits of yours show with respect to your experience with schedules and traffic?

(Testimony of S. Herbert Unterberger.)

A. Perhaps I misunderstood you. Will you tell me what you mean?

Q. Have you ever set up the various things that go into making up schedules and handling traffic, that go into the job?

A. Obviously not. I have never worked for a commercial air line.

Mr. Reilly: I ask that the word "obviously" be stricken.

Q. (By Mr. Reilly): Have you ever had any similar experience with respect to the operation of a commercial air line?

A. I am sorry, I missed that statement. I was disturbed by the previous comment.

Examiner Wrenn: Read the question.

(The question was read.) [2306]

A. I have never worked for a commercial air line.

Q. (By Mr. Reilly): Now, in these statistics which you have presented in these various exhibits, did you take into consideration any competition, new competition, which had been afforded either Western Air Lines or United Air Lines, as a result of certificates issued by the Civil Aeronautics Board in the periods shown in your exhibits?

A. Well, I have testified not at all about certification of other air lines.

Q. Well, frankly, so we will understand what I am after, you have made a lot of conclusions, both in the explanatory data and in the summary of your

(Testimony of S. Herbert Unterberger.)

exhibits here that leave the conclusion that you have some expertness in the scheduling and operations, and then you speak in terms of opportunity for employment.

I would like to have the record show just what you did with respect to the setting up of these figures on sheets of paper for presentation here, so the Board will know which element you considered and which element you did not consider. That is all I am interested in.

Mr. Bennett: I don't know whether that is a question, or not.

Examiner Wrenn: He was just explaining to the witness what he had in mind, what he wanted.

Mr. Reilly: I thought we could save some time.

Mr. Bennett: Now he wants to ask a question?

Mr. Reilly: That is right. [2307]

Q. (By Mr. Reilly): Did you in setting up both the decrease in available miles or miles operated by Western give any weight whatsoever to the operation of the Chicago-Los Angeles non-stop operated by United which was authorized by the Board in May, 1947?

A. Yes, sir; but may I explain? I think this requires a little explanation.

Examiner Wrenn: Go ahead.

The Witness: These data that are on these exhibits, there is no—we know exactly where they came from. Now, my function here was to take them and attempt to relate them to each other in some meaningful manner and draw the conclusions

(Testimony of S. Herbert Unterberger.)

which are quite obvious from them—certain conclusions that are quite obvious from them.

Now, using that data, analyzing them and organizing them, and even drawing conclusions from them are not something that is materially peculiar to the air line business. It is done for every type of business. I have done this for the steel industry, and the railway industry, and other industries.

Mr. Reilly: I am not interested in what you did for other industries.

I move to strike that, Mr. Examiner.

Examiner Wrenn: I think there was a question pending and you have not yet answered it.

The Witness: No, I haven't answered it yet, sir.

Examiner Wrenn: All right.

The Witness: The general question of whether I am taking certain things into consideration is something which I find exceedingly difficult to answer— [2308]

Q. (By Mr. Reilly): There is nothing general about it. I asked you if you took into consideration the Chicago-to-Los Angeles non-stop by United, and the effect it might have on the existing schedules Los Angeles-Denver—

A. I took it into consideration on Exhibit 16. That is the reason I put Chicago-Los Angeles on Exhibit 16.

Q. Do you know when the service started?

A. Chicago-Los Angeles?

Q. Yes. Non-stop by United.

(Testimony of S. Herbert Unterberger.)

A. No, I don't know the exact date. I do know it started prior to the transfer of Route 68.

Q. Subject to correction, and for the record, this is from the Official Air Lines Guide, I believe you will find it started in July.

A. That is about as accurate as I was. It started prior to the transfer of Route 68.

Q. Did you take into consideration, Mr. Unterberger, what effect, if any, the mechanical failures, or failures to complete all scheduled trips by Western might have had upon these data?

A. The mechanical failures and failures to complete trips are a constant in practically all data. They always happen, I would think. Sometimes they may be a little worse than otherwise, for specialized reasons, but they are a constant factor and would have no real effect on conclusions to be drawn.

Q. Did you take into account the effect of the accidents that happened in the year 1947 on passenger travel? [2309]

A. In what respect?

Q. On what it might have done to both United and Western's performance.

A. I did not testify as to what might have happened to United and Western's performance. I testified as to precisely what did happen.

Q. Well, you have proven—strike it.

What instruction did you receive from the A.L.P.A. with respect to your study on the Burlington

Formula? A. None.

(Testimony of S. Herbert Unterberger.)

Q. How long have you been working for Air Line Pilots Association, or under retainer?

A. I am not under a retainer.

Q. Are you paid per assignment?

A. Yes. I am paid for what I bill them.

Q. Well, I am not going to ask what you bill them, because I wouldn't tell you what I bill people. But I am trying to find out whether or not you are paid per job or are on an annual retainer.

A. No. I answered that. I do not have an annual retainer.

Q. Mr. Unterberger, as you probably know, from November, 1947, to April, 1948, DC-6 aircraft were grounded. Are you familiar with that?

A. Yes.

Q. As a consequence, United did not operate any non-stop service Chicago-Los Angeles. Did you take that into consideration in the compilation of this data?

A. From—— [2310]

Q. November, 1947, to April, 1948.

A. November, '47, to April, '48——

Q. I think it was the middle of November.

A. Well, the consideration that was given will be found in Exhibit 16. That there were three months there, January, February, and March when there were no such trips scheduled.

Mr. Bennet: What months?

The Witness: January, February, and March.

Q. (By Mr. Reilly): What is the matter with November and December, 1947?

A. There were trips scheduled, at least as re-

(Testimony of S. Herbert Unterberger.)

ported in the Official Air Lines Guide.

Q. What you have then is what you took off of C.A.B or other official documents; is that correct?

A. Precisely what I said.

Q. You are familiar that United has a restriction that they cannot operate local trips, or are you, between Las Vegas and Los Angeles?

A. No.

Q. What consideration did you give to the fact that they might operate the mileage but United is not carrying any passengers between those points?

A. Well, there was no occasion to give that point any consideration.

Q. That wouldn't be in Exhibit 16 in this catch-all classification?

A. No. Exhibit 16 doesn't have that [2311] classification.

Q. Well, the catch-all—

A. No, the catch-all "Other Classification" refers to Western only, not to United.

Q. You are not familiar with the restriction; is that right?

A. What is that?

Q. You were not familiar with the restriction.

A. No, sir.

Q. What significance, if any, did you give in the Western mileage to the operation of schedules between San Francisco and Los Angeles by the so-called irregular non-federal certificated carriers?

A. There was no necessity to give that any consideration, either. I have never alluded to it.

Q. Do you think it might have some effect on

(Testimony of S. Herbert Unterberger.)
the passengers being carried, or the mileage being operated?

A. Among a great many factors it undoubtedly is one.

Q. Have you ever looked at any statistics as to what they were carrying between those points?

A. Between?

Q. Los Angeles and San Francisco.

A. I have never looked at it.

Q. Would it surprise you to know that they are carrying more passengers than the certificated carriers between those points?

A. I wouldn't be surprised.

Mr. Reilly: That is all I have.

Examiner Wrenn: All right. We will take a five-minute recess before Mr. Kennedy begins his cross-examination. [2312]

(There was a short recess taken.)

Examiner Wrenn: Mr. Kennedy, you may examine the witness.

Q. (By Mr. Kennedy): Mr. Unterberger, would you turn to Exhibit No. 9, please.

Under the column "Los Angeles-Denver," for the months of February to July, 1947, you show a certain number of revenue passenger-miles per month. The question I want to ask you is: Don't you think it probable that if Western had continued to operate Route 68 those figures would have been smaller in 1948 and 1949?

A. Well, I really don't know. They were oper-

(Testimony of S. Herbert Unterberger.)

ating four schedules at that point. It is entirely hypothetical. I just don't know.

Q. Are you familiar with the record of the first hearing in this case, Mr. Unterberger?

A. The complete transcript?

Q. No, the exhibits I had in mind.

A. I can't testify to complete familiarity.

Q. There was an exhibit there that showed a certain amount of Western's traffic over Route 68 was derived from connections with United at Denver. A. Yes.

Q. In other words, Western participated with United in the carriage of Los Angeles traffic. After the authorization of United to go into Los Angeles direct, don't you think these figures would be reduced?

A. First of all, United was authorized to go into Los [2313] Angeles at an earlier point. The July figures might reflect that. It really doesn't. Secondly, the best measure of that, if we had one, to hypothecate—that is, Western had given good service or bad service, you never can tell, but the best measure, so far as we can get one, is what did United do when they got it. And you go to Exhibit 16 and you find it. Denver to Los Angeles. United took the route over, and United suffered under the same disability of competing with itself, over the non-stop Chicago-to-Los Angeles route, and United supported for the first five months of the year—United operated for the first five months of

(Testimony of S. Herbert Unterberger.)

the year three passenger and one cargo trip, for the remainder of the year two passenger and one cargo, and for the remainder of 1949 three passenger and one cargo. That is, the amount of employment offered by that route is now four round trips, which is exactly what you are referring to in 1947 on Western.

Q. Don't you think that United would be more likely to route Chicago-Los Angeles traffic via Denver when it has the Denver-Los Angeles route than it would have when Western had it?

A. Well, I don't know what United's policy would be in that respect. I mean, when I get down to buy an air line ticket I have some say in which way I go, too, and when I have the option I normally go non-stop.

Q. I think we can agree with that, Mr. Unterberger, but aren't there cases where passengers are more or less in the hands of the line?

A. Particularly when he is up in the air.

Q. Well, particularly in the matter of routing, don't [2314] you think there are many passengers routed via Denver that it wouldn't have routed if Western had that route?

A. I am not prepared to say what United would do under the circumstances. It is sheer guesswork, and anybody's guess is as good as mine.

Q. Would you turn to Exhibit No. 11, Mr. Unterberger. Are the carriers that are shown for the years 1948 and 1949 here the all-domestic air mail

(Testimony of S. Herbert Unterberger.)

carriers, the same carriers that are shown in 1946 and 1947?

A. No. There may be slight differences, if any carriers went out of business and new carriers came into business. Obviously those that went out of business would no longer be shown, since it is a global figure and those that came in would. But this does show what happened to the domestic air line industry. The total domestic air line industry.

Q. Well, in 1946—let's take 1946 and 1949. Did you show there feeder carriers in those years?

A. Oh, yes. It includes—

Q. You included feeder carriers in all domestic?

A. Oh, yes. They are domestic carriers.

Q. That is, every carrier certificated to carry mail, whether trunk or feeder?

A. Yes.

Let me make that very specific: What I did was that I combined that statistic with a combination of trunk line, feeder line—that is right. It is the certificated carriers.

Q. And your source is the recurrent report of mileage [2315] and traffic data.

A. That is right.

May I correct that? It includes territorial as well.

Q. It includes territorial? A. Yes.

Q. That would mean it would include Hawaiian Air Lines?

A. Yes. It includes everything that is labeled a domestic air line carrier. It does not include international or overseas.

(Testimony of S. Herbert Unterberger.)

Q. Would you turn to Exhibit 18.

What was the occasion of the preparation of this document?

A. Around the end of last year some time Mr. Behncke and I had a conference. Mr. Behncke said to me: "We are now being faced with the problems of consolidation. They are becoming serious. I believe he mentioned the Route 68 as one of the kind of problems that occur. "So what we would like is for you to investigate the whole situation and provide a generalized report on the Burlington Formula."

We talked about the experience on the railroads, with which problems there I had some experience in connection with the Railway Retirement Board.

Thereupon, I prepared the report entirely on my own—no further conferences—and submitted it.

What we have here are excerpts. They are not complete reports. There was a lot of statistical documentation which while available at all times are not fully transcribed here.

Q. Did you do the editing to take this out of the [2316] original draft?

A. I did this—I was asked to suggest which the pertinent parts are, and I did that. This follows my memorandum. There is a little workmanship problem along in here. There is a Table 5 but no Tables 1, 2, 3, and 4, which probably worries you. It did me, too. But by and large this represents the sense of the total document.

Q. Do you have any opinion, Mr. Unterberger,

(Testimony of S. Herbert Unterberger.)

as to whether in general some air line mergers might be desirable?

A. Oh, yes, I have an opinion. I think that in almost any industry there are certain cases where mergers are desirable, for operating efficiencies and many other reasons.

Q. Would you agree with me that in some cases to some extent operating efficiencies are accomplished by reduction in personnel after the merger is accomplished?

A. That in some cases?

Q. Yes, in some cases.

A. With the emphasis on "in some cases." On the railroads, as a matter of fact, there is a debate as to whether that is true or not. So, in some cases.

Q. You say that in some cases operating efficiencies in the air line business as a result of mergers would be effectuated by a reduction in personnel?

A. It is a hypothetical situation, to be sure. I think there would be cost saving. I am a little less sure about operating efficiencies coming about by a reduction in personnel.

Q. I will accept your correction. There would be cost saving. [2317]

A. There could be cost saving.

Q. There could be?

A. May I emphasize that to a certain extent? Cutting off personnel doesn't always save costs.

Q. Well, I will accept that. But can we agree that sometimes it does?

A. Oh, of course.

(Testimony of S. Herbert Unterberger.)

Q. And would you say that in some cases that would be desirable, particularly where the merged carriers were subsidized carriers and operating at the expense of the taxpayer?

A. I think that in general saving the taxpayers' money is a fine thing.

Q. And just a little more specifically, that it might be a good idea in some air line situations?

A. There you have to weigh the equities, it seems to me. The Federal Government has a great program in maintaining employment and is willing to spend a lot of money in that purpose.

Now, in the railroad situation, as a matter of fact, the equities were discussed in great detail, as to whether there ought to be railroad consolidations in the face of declining employment.

As a matter of fact, in general, I think it is not inaccurate to say that Congress came to the conclusion that it should not be effectuated if there were substantial declines in employment. But that was in the atmosphere of the 1930's. But I don't know what it would be now. But they weighed the equities. They said it might be better to keep these people on the railroads rather than throw them off the [2318] railroads in the face of consolidations and then work out a program to take care of the employment.

Q. Well, if you look at it as a matter of policy, you would say that is so in the face of declining employment, recession, depression. If you had a situation of full employment, upward spiraling of

(Testimony of S. Herbert Unterberger.)

economic development, wouldn't you say that if with a given industry you could reduce the liability of the taxpayers by so doing, and resultant cost savings, that it would be desirable to do that?

A. That would depend on the industry and what other factors are involved. In the air lines I feel that air line pilots are a resource in a variety of ways. My statement here indicates that. I don't want to do any flag waving, but I think here they are a resource from the standpoint of the national security, and you would have to weigh that in spending a lot of money to have our military resources up to snuff. And, as I think I say in this report, you can store airplanes but you cannot store pilot skills. And I think you have to weigh where the national interest is.

Q. Well, let me ask you your opinion as to where it lies. Wouldn't you say that at the present time, assuming the existing state of affairs in the air line industry that some mergers might be desirable?

A. Oh, yes. I think I answered that question before. The real question I think you are getting at, though, is do I think that pilots should be displaced through mergers, that the end effect of that should be that pilots who flew for the industry should no longer fly for the industry. Is that what you have in mind? [2319]

Q. All right, let's proceed with that.

A. Do I think that the pilots should be cut off from the industry?

(Testimony of S. Herbert Unterberger.)

Q. Assuming that you can effect a desirable cut in cost of operations as a result of merger.

A. This is strictly personal opinion, and I don't think I could bind the air line pilots on this.

Q. No, I don't want you to bind them.

A. And I am not sure they wouldn't agree with me.

If a national emergency existed and a demand for mergers, and if as a result of the national emergency the pilots were cut off—and I haven't the answer to that question; there are ways of not cutting off the pilots—then the answer follows, sure, but the answer to that does not—I don't want to engage in fine points about this. The end result of mergers might be operating efficiencies—as a matter of fact, the case we are talking about is not a merger at all——

Q. No, I am talking in general, not about this case.

A. And nothing I say here really affects this case. It is not a merger. There is no connection between this and a merger in any respect.

Q. Well, there is some connection but we can leave that to the Examiner and the Board.

A. Well, I just want to make it clear I am not talking about this case, because this is not a merger. I am not talking about an abandonment because this is not an abandonment.

Q. Well, let's take the first case, that it is desirable to have some mergers, and thereby effect some cost [2320] reductions by reducing personnel

(Testimony of S. Herbert Unterberger.)

Wouldn't you say that—let me rephrase that: Wouldn't you say that it would be desirable to have some mergers and effect cost savings by reducing personnel?

A. You have me in the realm where I could conceive, I could set up a hypothetical situation where I could say to myself under that hypothetical situation, yes. I don't know whether that hypothetical situation exists in the real world, or not. I could also set up a hypothetical situation in which I could in my own mind be very convinced that the answer is "No." When you say "some," I assume that could be as low as one, could be as low as half a one.

Q. Well, do you have any thought as to the present situation as to whether some mergers would be desirable?

A. Well, I would be hard pressed to—I just don't now have an informed opinion about whether some—to say that, I would have to have in mind which. I do not now have in mind which.

As a hypothetical situation, surely, you should get the best out of your resources.

Q. Suppose that a merger is desirable, and the merger finds itself with more personnel than it needs. Do you think it should retain the unnecessary personnel?

A. That is a question-begging question—unnecessary personnel. I don't think—I think that it is an inefficient use of human resources to have trained people not using those skills at their maximum level. That is an inefficient use of resources.

(Testimony of S. Herbert Unterberger.)

Now, if the thing you have in mind is having some people [2321] sit around who are fully trained and drawing pay indefinitely, then I think that is an inefficient use of resources, and, as an economist, my soul sort of rises against that.

Now, if you are talking about the transitional period when people with some skills find their skills obsolete, for one reason or another, such as technological or organizational changes, such as mergers, and so forth, then I think that the social course of those things involved in getting that improved efficiency should be borne somewhere, not necessarily by the individual.

At the moment most of the social costs of technological improvement, which includes better equipment and better management, which is a technological improvement—most of the social costs of those, except in the railroads where there are agreements, such as the Washington agreement, and so forth, is borne by the person least able to bear it—the particular individual who gets chopped off the pay roll.

And sometimes there are minor kinds of dismissal pay arrangements. General Electric has a dismissal pay arrangement, but what is it good for? A couple of weeks. Lay off a tool maker and give him a couple of weeks of dismissal pay. Hardly the way of bearing the social costs of improved technology, to my way of thinking.

Now, in the railroad industry there has been an assessment to a great extent of the social costs of

(Testimony of S. Herbert Unterberger.)

improved technology. It goes under the name of the Washington agreement, Burlington Formula, and so forth. But there is a very important point when we discuss that, that is, that all of those arrangements are arrangements which are not a substitute for [2322] merging the employees, integrating the employees.

Put it this way: The Burlington Formula, which incidentally deals with abandonments, and is not a case in point here—the Washington agreement more so—is based on the underlying assumption that first there will be an integration of the personnel. First, there will be an integration of the personnel and thereafter some people who are disadvantaged will receive these kinds of displacement allowances which will permit them an adequate standard of living during the period of their transition. But it must be remembered that it is not a substitute for first integrating the personnel. It never was, and it just was never so designed.

And if I may say so, the discussion of the Burlington Formula as an alternative to the pilot's proposal here is quite inappropriate. It is a misunderstanding of the Burlington Formula or the Washington agreement.

Q. Who misunderstands it? The pilots?

A. No. I haven't—

Q. Doesn't Mr. Stephenson misunderstand—

A. —misunderstood—

Q. I think there is a misunderstanding, but it is the pilots' misunderstanding.

A. That may be so. I insist that I haven't mis-

(Testimony of S. Herbert Unterberger.)

understood it. The Burlington Formula occurs—I don't like the Burlington Formula here. It was a specialized case where there was one agreement for one Burlington case. The Washington agreement, which is much more broad, is that first the employees are integrated, and then if there are people who are inconvenienced thereby there is a monetary compensation. [2323]

Q. Wouldn't that be the way to solve the problem here? To take on the pilots required for the additional operation, but not more, and possibly there might not be any, and then take care of the others by the Burlington Formula?

A. I am really not prepared to say that. If you want a personal opinion, I don't think so.

Also, I think your end conclusion as to the results is probably not accurate. I don't know what you mean by United taking them on. If they followed the air pilots' general position of transferring the employees with the routes, then I think there might be a legitimate concern, if people are bounced off the end of the seniority roster. I don't know whether there would be, or not. We just don't know about that. And perhaps there should be some bearing of that social cost by somebody. But the first step has to be taken first before we get the second.

Let me add another point to this discussion: That is, I don't think we should neglect the fact that the purpose of the Burlington Formula—really, not the Burlington Formula—the purpose of the Washington agreement was not primarily to compensate peo-

(Testimony of S. Herbert Unterberger.)

ple who get thrown out of employment. That was not the purpose of the agreement.

Examiner Wrenn: Let me get in here and ask a question on that: You have produced 16 exhibits here. The effect of those exhibits, as I understand them, at least your own conclusions of them, are that the transfer of Route 68 to United has had a very striking effect on Western Air Lines since that time. You have shown how various statistical indices [2324] have gone down. You have drawn the conclusion from that that that has had an adverse effect on the employment.

Now, what do you propose, or what is your idea for those individuals who are adversely affected here. You say the Burlington Formula is inapplicable. Captain Stephenson says "We want a certain number of individuals who were on Route 68, or the equivalent, to be transferred to United." But your exhibits and your testimony is that pilots up and down the line, and not only pilots up and down the line, but other employees there, would be adversely affected.

Now, where would these pilots you say are adversely affected by this decision of management be left?

The Witness: I am not sure. Let me see. If the pilots on Route 68 had been transferred together with Route 68, the adverse effect would not have resulted because while Western Air Lines' system declined——

Examiner Wrenn: One of us certainly misunder-

(Testimony of S. Herbert Unterberger.)

stood your testimony, if that statement is correct.

The Witness: Well, may I try to clarify it insofar as I possibly can.

My Exhibit 16, for example, demonstrated that the pilots on Western, if they had gone with the route, could have continued to fly—there was employment opportunity there for them to fly that line. Had that happened the pilots on Western would not have been adversely affected because at the same time as Western's business shrank Western's aircraft miles shrank, the people to whom it was obligated to give employment also shrank, and it would have shrunk approximately the same proportion. [2325]

Now, United, on the other hand, accepted the route, increased its business, increased its employment opportunities, but it did not take on any additional pilots at that point. Perhaps it did at somewhere along the line, but it did not take on the pilots who were running the route.

So, had these people been transferred together with the route the adverse effect on Western's pilots would not have occurred because the number of employees would have shrunk by the same proportion as the employment opportunities. On the line of United the employment opportunities increased and the number of employees would have increased by the same proportion.

Examiner Wrenn: Well, I am not an economist, but I don't quite understand that reasoning.

(Testimony of S. Herbert Unterberger.)

The Witness: Well, I am terribly at fault if I haven't made that clear.

Examiner Wrenn: Go ahead, Mr. Kennedy.

Q. (By Mr. Kennedy): If United takes on a number of pilots and finds it has too many pilots on the pay roll, would it be the position of the Air Line Pilots Association that they should not dismiss any pilots?

A. I think the captain is better qualified to answer that.

Q. Have you anything to suggest as to what to do with any people who are dropped off the bottom of the list?

A. As an unhumanitarian——

Q. I mean in this case.

A. In 1947 the pilots on Western got a windfall. They [2326] got a route, a very desirable route——

Q. Pilots on United?

A. United, I am sorry. They got a windfall, a desirable route. They have had that route now for several years, and now if one removes the windfall—I am hard pressed to find any inequity. If I am walking down the street and I find \$20 and someone comes along and says, "That is mine," and I give it to him, I haven't lost \$20. That is exactly what I mean.

As I understand the testimony here, nobody is trying to claim compensation for that windfall. Western's pilots are not pressing that claim at all. Hence, the United pilots who gained a substantial amount thereby, and are now required not to dis-

(Testimony of S. Herbert Unterberger.)

gorge but merely required not to gain from here on out, that doesn't seem to me to be a disadvantage.

Q. Assuming that United is required to hire a number of pilots equivalent to the number flying Route 68, is there any social advantage in requiring them to hire the top pilots rather than the bottom pilots on the Western's list?

A. Well, let's not kid ourselves. It is not the top pilots necessarily. Some of them are the top pilots in the Western's list, as I understand it. The significant practical result, if they hire the bottom pilots on the Western list, that is an Indian giving as you can find. If they hire the pilots who flew the route it seems to me that is pretty equitable and will no doubt force some readjustments on United.

Q. Why is it Indian giving? Are the pilots on the seniority list on Western so low that they wouldn't get jobs? [2327]

A. I don't know. If you hire the bottom ones on one list and put them on the bottom of somebody else's list their chances are pretty slim.

Examiner Wrenn: Do you know Mr. Jerome D. Fenton?

A. No, I do not. I know a Fenton, but that is not his first name.

Mr. Kennedy: Mr. Unterberger made certain conclusions about the Burlington agreement, such as Mr. Fenton did before, and I don't think he is qualified to do that. I would like to note my objection to that on the record.

(Testimony of S. Herbert Unterberger.)

Examiner Wrenn: You made reference to the inapplicability of the Burlington Formula. In response to Mr. Crawford's question you said that when you were speaking of that inapplicability you were speaking of pilots, not the employees generally. Would you mind explaining to me what you mean when you say the current air line situation?

The Witness: I meant in that case the status of the air line industry as currently found.

When I get back into some of the reasons I find there is no similarity between the situation in the air lines in terms of trend of employment with the railways in 1936 when this arrangement was first worked out.

Examiner Wrenn: What did you have in mind in making this study and in using those words?

The Witness: What I had in mind was that I wanted to compare various things. I compared the trend of employment now found on air lines with the situation when the Burlington Formula was applied to the railways.

Examiner Wrenn: Did you relate the use of the Burlington [2328] Formula to any particular situation in the air lines? Did you have anything in mind, or did you just start out with an abstract idea—

A. I did several things. I found that the application to the air lines during prosperity, the application of the same formula with railroads in depression hardly seemed to be fair. The current situation of the air lines is comparable to the same thing

(Testimony of S. Herbert Unterberger.)

when the railroads found themselves in a period of prosperity. We find that the air lines system in the United States is growing, is being developed. It is a long distance from being fully developed. The railway system is an overdeveloped industry: one that is cutting back. And that has a great effect on whether you want to retire employees from the industry.

In the 1930's there was a general notion that there were too many railroad employees and this was one way of retiring them from the industry—disposing of them. The situation was quite different from the current airline industry—of an expanding industry, one that arrives a long distance off. And when we deal with the problem of national security, there was a problem of national security in the railroads in the late '30's; the current situation in the air lines was quite different from the situation to which these arrangements were initially applied.

Examiner Wrenn: You didn't have any particular situation in mind to which this was to apply?

The Witness: Any particular merger?

Examiner Wrenn: All right.

The Witness: No, sir. As I explained previously, this [2329] document was prepared initially in connection with the general problem and not with relation to either the Route 68 case or any other specific case.

Examiner Wrenn: All right. Thank you, sir.

Mr. Crawford: May I ask a question, Mr. Examiner?

(Testimony of S. Herbert Unterberger.)

Examiner Wrenn: All right, Mr. Crawford.

Q. (By Mr. Crawford): I asked you with reference to this formula, if you had only applied it to the pilots. There was one point there I thought we could clear up.

On page 3, the second paragraph, you are discussing railway labor, and in that same paragraph you say this:

“Displacement or dismissal allowance and the other less important features of these arrangements cannot adequately compensate for the real losses suffered by these employees.”

Now, in line with your first statement in regard to my question, by “these employees” do you mean these pilots?

A. Just a minute while I read this paragraph.

No, my thought there was to—I thought that was to relate that to railroad employees. That displacement and dismissal allowances very frequently were regarded by the railroad employees as not compensating for their losses in changing from the railroad industry. If the employee during his period of study and preparation was found to have run out of all of the money under the Washington agreement, and still be unable to assimilate employment in other industries, it didn't compensate. It also didn't compensate for the fact that many of them had to move their homes—the [2330] inconveniences—inconvenience of changing their lives.

Q. Well, in your research or study of this par-

(Testimony of S. Herbert Unterberger.)

ticular point you say the railroad employees were not satisfied—that, of course, applies to all employees; they are always looking for ways to improve them—but have you ever looked to any of the other executives—Mr. Hays, president of the Machinists, or Mr. Harris, chairman of the Brotherhood of Railway Clerks?

A. I don't remember discussing it with either of those gentlemen. I remember it coming up in connection with Mr. Lieserson and Mr. Burke Jewel, who was—you remember his title better than I can.

Q. He was head of the A. F. of L. employees, Railway Clerks? A. That is right.

Q. But have you ever heard of any of those gentlemen saying that they would be willing to abandon or discard this particular formula—

A. Certainly not.

Q. —until something better came along?

A. Certainly not. If I gave you to understand it that way, I correct it. They are not dissatisfied with it, but it is not as good as it ought to be.

Q. So we are now concerned with the best formula up to date. From your comment there as to displacement and dismissal allowances, I gather from that that your one objection to the Burlington Formula, or any other formula that provides for displacement or dismissal allowance, is the particular factor you are opposed to that you don't think that that is [2331] sufficient, that dismissal or displacement should not be permitted; that the employees should be kept intact?

(Testimony of S. Herbert Unterberger.)

A. No, I am not sure that I am quite that rigid. The burden of this discussion here relates, of course, to air line pilots. I don't know about the other people. And my general thoughts in this matter is that the air line industry as it now finds itself, a growing industry and expanding industry, and so forth, is hardly the appropriate place to develop a rigid formula as to the pilots as to how you displace them and how you dismiss them, before a great many other things are done first. That is the burden of my discussion.

Perhaps ultimately when it is a mature industry and faced with the real problems the railroads were faced with in the '30's, it may be that the Burlington Formula, or something a lot better than the Burlington Formula, from labor's point of view would be quite pertinent. But the burden of this discussion is that the Burlington Formula now, in the situation that the railroads now find themselves, and the predictions from the air line industry, and the kind of predictions that don't seem inaccurate, this is hardly the place to discuss them with respect to pilots, how you cut them off from the industry.

Q. Well, wouldn't it—of course, I am not attempting to come over into the pilots part of the case. I am just wondering, though, do you advocate, then, a formula that would eliminate the compensation for dismissal provision with the pilots—do you say that that same provision should be made for other employees? [2332]

(Testimony of S. Herbert Unterberger.)

A. No, sir. I have no opinion with respect to other employees.

Mr. Crawford: That is all.

Examiner Wrenn: Any further questions?

Mr. Reilly: Yes, I have one or two questions.

Q. (By Mr. Reilly): This social cost you have been talking about, occasioned by questions of Mr. Kennedy, do you think that is an obligation that should be borne by the stockholders or the Government in this industry?

A. Well, in the air line industry it is sometimes difficult to tell where the stockholders' obligation and the Government's obligation begins. It is a subsidized industry, and the operating costs in the air line industry are borne by both people in differing proportions on different air lines. I would think that—I think the question is of less importance to the air line industry than in most places.

Q. Have you finished your answer?

A. Yes.

Q. You are familiar with the fact that in all rate cases, where you are subsidized or not subsidized, there are certain disallowances made, and depending on what side you are sitting you are happy or unhappy. What would you think about a situation like this—there is a lot of talk about subsidy and compensation, that is, cost plus the allowance for use of your property—that we would set up certain funds each month and the air line would get a check to use for that social obligation.

Now, facing it honestly? [2333]

(Testimony of S. Herbert Unterberger.)

A. Your question is really do I think that should be borne by the stockholders or the Government?

Q. Yes.

A. Let me tell you my thinking on it. I think insofar as the air line is gaining the advantage of the merger they should bear the cost. Any cost in excess of that I would have no personal objection to the Government bearing it.

Q. Suppose the merger didn't turn out just right; would the Government—bearing in mind there would be no lack of efficiency and economy in the operation of the air line——

A. You are asking me——

Q. You said first if it proved advantageous, then the——

A. No, I think you have missed my thinking.

Q. Go ahead.

A. My thinking is this—and I think we should go back to the Burlington Formula, or its——

Q. The Washington agreement.

A. Yes, the Washington agreement, for the moment. Now, I am not exactly sure what Mr. Kennedy's observation was a few moments ago, but by and large I think it is accurate to say that the principal purpose of the Washington agreement was not so much to compensate people for their losses as it was to prevent ill-founded and ill-considered consolidations, and as a matter of fact it probably had that result so far as we can tell—because you can't talk about an ill-founded situation that didn't happen. It seems to me that the kind of thing to

(Testimony of S. Herbert Unterberger.)

be done in this case is for air lines, as well as railroads, to consider the cost before they make their decision; not to make their decision and if it doesn't come out [2334] right the Government then should hold the bag. And in arriving at that decision one of the costs that should be considered, just as you consider a variety of other costs, is the replacement cost of pilots. If the merger is not economical then you wouldn't make it. If the merger on that basis is economical go ahead and make it.

Q. I want to ask you a question about pilots. I want the record to show that I love them, but there apparently in an excess number of pilots today, if what I read is true that because of larger equipment there are assertions by people who are in a position to know that one air line has let off 400 and another air line in the neighborhood of 100 or 175. Now, do you think that is setting up any critical reserve of pilots, that you have excess pilots?

Strike that question, please. Let me put it this way: What I am going to get to is, do you think that skilled mechanics are any less critical in time of national emergency than pilots?

A. Well, I don't know whether they are any less. That is a very narrow judgment—skilled mechanics——

Q. Well, you will agree that they are critical in keeping airplanes flying——

A. Oh, certainly.

Q. Not storage.

A. Not storage.

Q. In making your study of the Burlington

(Testimony of S. Herbert Unterberger.)

Formula, as I understood your testimony, you made it at the request of Mr. Behncke because things were getting critical in the face of mergers and consolidations, some time late in 1947; [2335] probably after December 5, 1947.

A. No, it was late 1948.

Q. Excuse me. I thought you said late 1947. You did not make any study with respect to how it might affect employees other than pilots?

A. No, I did not.

Q. Don't you think it would be helpful to you to support the position you are taking here?

A. I would be very happy to do that.

Q. But you were not requested to do that?

A. I was neither requested nor authorized.

Q. Do you think it is a social matter that they should be treated differently?

A. Oh, they might very well be treated differently.

Q. Why?

A. I am not now familiar with the kind of problems that your machinists, and——

Q. Well, let's take it as a matter of people.

A. Well, even they may be different. And there might be preferences in terms of treatment. Some people might be quite willing to kiss the airplanes or air line industry good-bye, and others who——

Q. Apparently there are some people here who do not want to.

A. ——who would not want to, and that is perfectly understandable, too. It seems to me if they

(Testimony of S. Herbert Unterberger.)

can be classified, the best approach to the problem is to treat them in terms of their own notions as to equity.

Q. Now, you are getting down to the measuring of these [2336] costs. How can you measure the costs if you don't know, for example, what all the employees—their preferences or what is best for them? A. I think they should know.

Q. And what interest do you think the stockholders have in all of this?

A. A very substantial interest.

Q. Have you made any study of what they should receive from the air line industry in the past few years?

A. I have not made any special study, no.

Q. Do you believe they have or have not received any dividends on common stocks?

A. My general recollection is that stockholders have not done too well.

Q. Do you know of anything with respect to the law that would require them to assume the obligation of absorbing into the cost of running a United, for example, taking over pilots?

Mr. Kennedy: I object to that. I don't think Mr. Unterberger is a lawyer and knows anything about that.

Examiner Wrenn: Read the question.

Q. (By Mr. Reilly): Well, I will ask him: You studied the Washington agreement. In your studies extending over the years I assume that you have studied various labor laws? A. Yes.

(Testimony of S. Herbert Unterberger.)

Q. And you consider yourself expert on those matters?

A. No, sir; not on the strictly legal aspects of them.

Q. How about the provisions in the law? [2337]

A. I am quite familiar with the provisions in many labor——

Q. Are there any provisions which require the stockholders to make these absorptions?

Mr. Kennedy: I don't think the witness can answer that.

Examiner Wrenn: Read the question back to me.

(The question was read.)

Examiner Wrenn: I am sorry, I was thinking you had asked him, did he know of any.

The Witness: I think the railroad situation is tantamount to that, whereas a condition of merger very frequently these conditions are attached, and those have some backing——

Q. (By Mr. Reilly): You mean the Lowden case and the Railway Executive cases?

A. Yes. So the obligations in the face of those, the obligations of railroad management are pretty clear-cut.

Q. Do you think anybody who had not flown the Route 68 should be absorbed by United?

A. I don't have any opinion on that subject.

Q. Well, I thought I understood a little while ago—I may be wrong—that you said that if the pilots had been transferred as they were then oper-

(Testimony of S. Herbert Unterberger.)

ating then United would not have been obligated to take anybody else.

A. No, that is not what I said. There wouldn't have been a problem.

Q. There wouldn't have been an adverse effect on other pilots? [2338]

A. There would not have been adverse effects due to the change, to Western pilots.

Q. There is one pilot who used to work for United. Subsequently he worked for Western and then when he was recalled to duty for Western he did not report back. He flew Route 68. In that case do you think they ought to take a pilot from another route?

A. I am not prepared at this point to answer that question. That requires a pretty substantial analysis of the equities involved. Apparently that analysis is going to be made, from what I hear here.

Q. I don't know whether it is or not. Unless you have better information than I have——

A. I am alluding to the arbitration.

Q. I know what you are alluding to.

A. Some competent person is going to be required to make a value judgment of that.

Q. Would your answer be true with respect to pilots who flew Route 68 and are now flying other routes and have no desire to go to United?

A. Yes—put it this way: I have not made an analysis of that particular situation.

Mr. Reilly: That is all.

(Testimony of S. Herbert Unterberger.)

Mr. Crawford: I have one more question, Mr. Examiner.

Examiner Wrenn: You understand I am quite interested, and I appreciate the witness giving us his thinking on these things, but sometime we are going to have to bring this to a close. So let's be tempered by that in future questions.

Go ahead, Mr. Crawford. [2339]

Q. (By Mr. Crawford): You made one distinction there between the railroads and the air industry upon the point of national security, or defense, in which you pointed out that the air industry was particularly vital as a matter of defense in time of war.

It is also true, isn't it, that the railroad industry is a vital factor in the defense now?

A. Let me clarify that. I don't think you quite understood.

In the middle 1930's when consideration was given to various methods for handling this problem on the railroads, the country as a whole was not giving heavy weight to the military preparedness problem and, hence, it didn't weigh heavily then.

Examiner Wrenn: All right, gentlemen, if there are no further questions, the witness may be excused.

Thank you.

(Witness excused.)

Mr. Bennett: Shall we start with the next witness?

Examiner Wrenn: All right.

Mr. Bennett: Mr. Oakman.

Whereupon,

RONALD OAKMAN

was called as a witness by and on behalf of Air Line Pilots Association, and, having been first duly sworn, was examined and testified as follows:

Examiner Wrenn: Give your initials and address for the record. [2340]

The Witness: Ronald Oakman, 4907 Montgomery, Downers Grove, Ill.

Direct Examination

By Mr. Bennett:

Q. You are an employee of the Air Line Pilots Association International? A. I am.

Q. In what capacity are you employed?

A. Research director.

Q. You are a statistician, are you?

A. Yes, sir, I am.

Q. Would you state for the Examiner your qualifications in that regard?

A. I have been engaged in this type of work for the last six years, two years for the Air Line Pilots Association and four years in private industry. I have a degree from the University of Chicago in economics, a Bachelor's degree; a Master's degree in business statistics, the same university.

Q. Did you indicate where you had been employed the other four years of the six?

(Testimony of Ronald Oakman.)

A. American Gear Manufacturing Company.

Q. In what capacity?

A. Staff assistant in charge of sales analysis.

Q. You are sponsoring Air Line Pilots Association Exhibit No. 17, I think.

A. Yes. Well, there is some confusion about the number.

Q. Well, his is 17-A.

A. This is still 17, in that case. It was entered originally as 17. [2341]

Mr. Bennett: In that event, if the Examiner please, I would ask that that exhibit be re-marked Air Line Pilots Association Exhibit 19, for identification.

Examiner Wrenn: The one that has previously been marked as 17? It was distributed and I have a bound volume of it.

Mr. Bennett: Yes.

Examiner Wrenn: All right. Let the record show that the exhibit previously distributed and marked as Exhibit 17—and let's distinguish that from Exhibit 17-A that Mr. Unterberger identified—will now be marked for identification as Exhibit Air Line Pilots Association No. 19.

(A. L. P. A. Exhibit No. 17, for identification, was re-marked as A. L. P. A. Exhibit No 19, for identification.)

Q. (By Mr. Bennett): Where was this exhibit prepared?

(Testimony of Ronald Oakman.)

A. In my department, the Air Line Pilots Association.

Q. And did you prepare the exhibit?

A. Not personally, no.

Q. Have you made—what is the source of the material from which this exhibit was prepared?

A. There was certain historical material gained from the books and records which are listed in the bibliography at the end of this exhibit. The rest of the material was gained from questionnaires sent out to members of the Air Line Pilots Association; that is, the pilots, and their answers. And questions directed to air line management concerning the history and development of air lines, and the manner in which pilot personnel was handled in the cases of mergers, acquisitions [2342] and sales of air lines or parts of air lines.

Q. Have you made a thorough and complete study of those statistical materials on which this exhibit was compiled? A. Yes, I have.

Q. You are prepared to sponsor this exhibit?

A. I am.

Q. And to be cross-examined upon its contents?

A. Yes.

Q. Will you look at the exhibit, Mr. Oakman, and tell us, if you please, what it shows.

A. Part 1, the corporate history of the air lines in this exhibit is a compilation of the historical mergers, acquisitions, and sales that went into the building up of the air lines as they are presently

constituted. It is true that there were certain air lines that did not have too much of that in their background, inasmuch as they are small and perhaps recently organized; but the fact remains that in most cases air lines as they are now organized grew from these series of mergers, sales, acquisitions of other air lines, or parts of other air lines.

Part II, where, in connection with that first part, which is more or less of a corporate history of these various air lines, there was an attempt to list the various acquisitions or mergers as they took place. Sometimes this was a little difficult and actually there were only seven examples out of the existing 29 at the time the study was made which were outlined in detail and every transaction or change is attempted to be mentioned in this [2343] survey.

In this part of the exhibit we have attached a series of letters between the president of Air Line Pilots Association and management of United Air Lines, written about the month of January, 1940, because at that time United Air Lines was considering the purchase or merger with Western Air Lines, or Western Air Express as it was then known. This merger did not go through but these letters clearly indicate that had this merger gone through all of the pilots would have been taken into and integrated completely without loss of seniority in the United Air Lines Pilots' seniority roster.

If I could, I would like to read part of one of those letters.

(Testimony of Ronald Oakman.)

Examiner Wrenn: It is already printed here. There is no need to read it.

The Witness: I would like to call particular attention to the letter from Mr. Herlihy, vice-president of operations, that appears on pages 12 and 13.

Part II is merely a reproduction of the questionnaires, as they were answered by members of the Air Line Pilots Association concerning the question dealing with the nature of handling the employment problem among pilots created by mergers, acquisitions, or sales of air lines, or parts of air lines, and the questionnaires were directed to pilots, members of the A.L.P.A., who had intimate connection with or actually were affected by these mergers in the past.

Without any exception, these questionnaires indicate that the pilots in all cases in the past went with the line.

Part III consists of answers to questions directed to air line management, with an attempt to obtain the same [2344] information as to how management had dealt with this problem and what the precedent was in the air line industry concerning the handling of pilot personnel in mergers and sales. And though we have only four answers to our questions here, both Western and United answered this question and indicated that their policy was to take over the personnel without loss of employment or seniority rights.

Summarizing, then, this exhibit establishes that air lines, as they are now constituted, are the out-

(Testimony of Ronald Oakman.)

growth of a series of mergers, acquisitions, and sales, and that the pilot personnel involved in these mergers, acquisitions, and sales historically, and without exception, went with the line and were integrated into the consolidated seniority list.

That further illustrates that both the pilots and management were aware of this precedent that had been established in the air line industry.

That is all I have to say about it.

Mr. Bennett: You may cross-examine.

Examiner Wrenn: Off the record a minute.

(Discussion off the record.)

Examiner Wrenn: All right, we will go ahead.

Mr. Crawford, do you have any questions?

Mr. Crawford: No questions.

Examiner Wrenn: Mr. Renda, you may cross-examine.

Cross-Examination

By Mr. Renda:

Q. Mr. Oakman, you indicated that Appendix III-A to the exhibit which you sponsored, identified as Exhibit No. 19, constitutes letters written by the various air lines in [2345] response to a letter from Air Line Pilots Association; is that correct?

A. That is right.

Q. I invite your attention to the letter contained in that exhibit at page 82, which was written by Mr. Kenneth E. Allen, Director of Advertising and Pub-

(Testimony of Ronald Oakman.)

licity for Western Air Lines, dated January 5, 1949.

A. Yes, I have that. That is Appendix III, though. Apparently that appendix is improperly placed in your copy of the exhibit. Appendix III is replies from air line management. III-A consists of letters from United Air Lines to Mr. Bechnke.

Q. Then mine was improperly labeled. But in any event it is the letter on page 82.

A. That is right.

Q. Who is Bruno J. Pasowicz?

A. He was director of research, Air Line Pilots Association.

Mr. Renda: Mr. Examiner, for purposes of identification, I have a copy of a letter here which I would like to have identified as Exhibit No. WX-1.

Examiner Wrenn: It will be so marked.

(The document referred to was marked Western's Exhibit No. WX-1, for identification.)

Q. (By Mr. Renda): Mr. Oakman, I first show you a letter written by Mr. Pasowicz dated December 28, 1948. It is an original. I will ask you to examine that letter and then examine Exhibit WX-1 and tell me if this isn't a true and correct copy of the [2346] original.

A. Yes, I would say that is a correct copy.

Q. True and correct copy? A. Yes.

Q. Now, is there anything on that letter of December 28—first, may I suggest—

Mr. Renda: I am going to introduce this in evi-

(Testimony of Ronald Oakman.)

dence, Mr. Examiner, so that I can question him on it.

Mr. Bennett: Is it being offered now?

Mr. Renda: No, not now.

Examiner Wrenn: It is just being marked for identification.

The Witness: Could I see that copy again?

Mr. Renda: Surely.

Q. (By Mr. Renda): Mr. Oakman, is there anything in that letter, either by letterhead or content, to indicate that this inquiry originated from the Air Line Pilots Association?

A. Aside from the fact that Mr. Pasowicz was an employee of the Air Line Pilots Association at that time, I don't know that you would have an indication.

Q. Does it indicate on the letter that he was an employee of Air Line Pilots Association, or what his position was? A. No.

Q. Isn't it a fact that anyone receiving this letter would conclude that it was a letter written not by the Air Line Pilots Association probably but somebody undertaking a study of this entire [2347] problem?

A. I imagine that would be the conclusion drawn, but regardless of who wrote the letter it was a question that gave the same answer.

Q. Don't you think it would be a fair approach to the problem if the letter had been addressed to the management of Western Air Lines and not to public relations on as serious a question as that?

(Testimony of Ronald Oakman.)

Mr. Bennett: I object to what he might think. The facts are what we are going to get at. The letter speaks for itself. It is a reply and that is all there was to it. What he thinks as to what Mr. Pasowicz did is not a proper matter in this case.

Mr. Renda: I am not concerned with whether this gentleman thinks what Mr. Pasowicz did was right or wrong. I want to establish that this was what the Air Line Pilots Association did.

Mr. Bennett: You have the letter, and you say you are going to offer it. The evidence will show that you received it and replied to it. Whatever conclusions you can draw from that, you can say.

Mr. Renda: This gentleman has drawn certain conclusions from this material, of which this is one letter, and I want to ask him the question——

Q. (By Mr. Renda): In your opinion, Mr. Oakman, don't you think a letter of this type should be addressed to management rather than the director of public relations, and when a letter is received from the director of public relations and advertising how can you attach the significance you have when arriving at [2348] your conclusion?

Mr. Bennett: Now, I submit there are at least five questions in that combination of sentences that have been set out there, and I think the questions should be asked one at a time and I should be permitted to object to them in that number.

Examiner Wrenn: You can object to any or all of them.

(Testimony of Ronald Oakman.)

Mr. Bennett: I object to it because there are more than one question in that question.

Mr. Renda: I will be more than glad to rephrase it.

Examiner Wrenn: All right. I think we are being highly technical.

Mr. Bennett: Technical because there are five questions?

Examiner Wrenn: Go ahead.

Q. (By Mr. Renda): Mr. Oakman, you have relied upon the information contained in this letter from Mr. Kenneth E. Allen, director of advertising and publicity, in arriving at your conclusion as to what Western's practice has been in the past?

A. It is substantially the same information as furnished by the pilots, however, that the pilots go with the line. It didn't contradict the information I had already had.

And, incidentally, the letter does bear his title "Director of Advertising and Publicity" on it. We didn't attempt to change his capacity in any way.

Q. But isn't it somewhat unusual that you would rely upon the opinion of the director of advertising and publicity of a company on a question which involves the policy of the [2349] company?

A. I would think he would be the person who would give that out. Various air lines have various titular heads that handle that type of information, and some air lines have different segregations than others. It is not my job to analyze that. I wouldn't attempt to.

(Testimony of Ronald Oakman.)

Q. Well, isn't it a fact that this letter was written by Mr. Pasowicz not on A.L.P.A. letterhead and in no way indicated that the point of origin was the A.L.P.A. office, was designed to solicit this information from the director of public relations and not the management of Western Air Lines?

Mr. Bennett: I submit the letter speaks for itself, if the Examiner please. Whatever the letter says, and whatever is on the letter, and whatever heading is on it, or omitted from it, it speaks for itself.

Examiner Wrenn: Let me ask this question: Would the only way Mr. Allen would have of knowing who Mr. Pasowicz is, would that have to be through personal knowledge that he might have picked up somewhere else as to the position Mr. Pasowicz occupied?

Mr. Bennett: I have no idea.

Examiner Wrenn: Do you have any idea on it, Mr. Witness?

The Witness: Well, there is a publication put out by the Government, and distributed to every organization that I know of, listing research directors and directors——

Examiner Wrenn: Well, what I am trying to get at: He would have to acquire the information from some place.

Mr. Bennett: Did they know each other? I don't know that they did, but I doubt that they knew each other. [2350]

(Testimony of Ronald Oakman.)

Mr. Renda: At any event, I offer this exhibit in evidence, Mr. Examiner.

Examiner Wrenn: It has been marked for identification.

Mr. Bennett: I have no objection to it being admitted.

Mr. Renda: I have no further questions.

Mr. Reilly: I assume, Mr. Examiner, that Mr. Bennett is going to produce the originals of all of these letters.

Mr. Bennett: We have no objection to doing that.

Mr. Reilly: And, in addition, I want the copies of the letters that were sent to United Air Lines.

The Witness: You mean the duplicates?

Mr. Reilly: I want the duplicate copy.

Examiner Wrenn: Off the record.

(Discussion off the record.)

Examiner Wrenn: All right, on the record.

Mr. Bennett: You have them, don't you?

The Witness: I have most of them here, and we can produce them.

Examiner Wrenn: I think you had better look into that overnight, because the question will undoubtedly come up at the time you offer your exhibits in evidence, and you had better give some attention to it during the evening.

Mr. Bennett: All right.

(The document heretofore marked Exhibit No. WX-1 was received in evidence.)

(Testimony of Ronald Oakman.)

Q. (By Mr. Reilly): Where is Mr. Pasowicz?

A. I don't know.

Q. Has he left the employ of Air Line [2351] Pilots Association? A. Yes.

Q. When did he leave?

A. I don't know that, either.

Q. When did you get your job? When did you succeed him?

Mr. Bennett: Please let him answer the question.

Mr. Reilly: Well, I was going to make it easy for him.

Examiner Wrenn: Go ahead.

The Witness: I had been with the organization two years ago, and I came back to them this July.

Q. (By Mr. Reilly): As director of research?

A. Yes.

Q. Replacing Mr. Pasowicz?

A. That is right.

Q. Do you know where he is employed now?

A. No, I don't.

Q. Can you tell me why Mr. Pasowicz, if you know—you came back in July? A. Yes.

Mr. Reilly: I submit, Mr. Examiner, he cannot testify to any of this material.

Mr. Bennett: Is that a question?

Mr. Reilly: No, that is a statement to the Examiner, for a ruling.

Mr. Bennett: When I offer the exhibit in evidence I assume the Examiner will pass on it. If you want to make an objection at that time, I see no objection to your doing so. [2352]

(Testimony of Ronald Oakman.)

Mr. Reilly: I can't see that the witness can even discuss it. I move to strike all of his testimony in regard to his exhibit. He wasn't in the employ of the Air Line Pilots Association at that time.

Mr. Bennett: I would like to be heard on it.

Examiner Wrenn: All right.

Mr. Bennett: If you go back to the testimony in this case by Mr. Oakman, you will find that he said he had studied every piece of material which went into this exhibit; that he had reviewed them and that he was in a position to sponsor this exhibit.

And in consequence he therefore testified regarding the exhibit. I submit that under those circumstances—and he also said he was prepared to be cross-examined upon them.

It becomes obvious, or should be obvious, that in the event of one employee leaving a company, as occurred in this instance, that an exhibit of this character would not be completely lost to a litigant if he had a party who was a competent statistician who had studied all of the material and was prepared to sponsor the exhibit.

I say that the motion to strike the testimony is not in order, and that the exhibit as offered in evidence, when and if offered in evidence, would be received.

Examiner Wrenn: Mr. Reilly.

Mr. Reilly: Mr. Examiner, these questionnaires—and, of course, I am going to object to them if they are offered—are dated in March and February of this year.

(Testimony of Ronald Oakman.)

Now, it is obvious that this witness could not have taken any part in the preparation of that questionnaire, or in the [2353] dissemination of it to these pilot council chairmen.

This study—I don't know when it was made, but it was distributed to the parties in June of this year—it is obvious that Mr. Oakman, who did not return to the employ of the Air Line Pilots Association until July, could not have studied the material and made this study. He could not have taken Mr. Pasowicz's place insofar as the studies which he set forth in his bibliography are concerned.

The various letters sent to the air lines were sent over the signature of Mr. Pasowicz. There is nothing in there to indicate they were sent on behalf of the Air Line Pilots Association.

As we know, there are articles appearing over the signatures of various people which say they are their personal views. Now, Mr. Pasowicz is not here to be cross-examined as to any of this information, and I don't think that this Board is getting information upon which you can rely can supplant the observations of the witness at the time these questionnaires were distributed and the studies made at a time the present witness was not an employee of the Air Line Pilots Association.

Examiner Wrenn: In view of the date the exhibit was distributed here, which I believe according to a letter in Exhibit I addressed to me was May 23, and the witness' testimony as to the time he came back, I am going to have to grant the mo-

(Testimony of Ronald Oakman.)

tion. I am going to allow it to stand as an offer of proof, however, and counsel can argue it before the Board, if you wish. But under the circumstances I have no other alternative, Mr. Bennett. I am not going to strike it physically [2354] from the record, but I am going to grant the motion.

Mr. Bennett: I make the offer of proof.

Mr. Reilly: Is he making the offer of proof? Because if he is I am going to respond to the offer and object to it not only as to substance but as to form. If Mr. Bennett is going to make his offer now I will answer the offer of proof now, because if it goes to the Board as an offer of proof I want my comments to go before the Board, also.

Mr. Bennett: The offer I am making is already in the record. I believe Mr. Wrenn said he would not strike it physically from the record. That is my offer.

Mr. Reilly: It accompanies the docket. It is not in the record.

Mr. Bennett: It is in this record and is not being physically stricken from it.

Mr. Reilly: The record shows that I say it is not in the record. It accompanies the docket.

Examiner Wrenn: It is not in evidence.

Mr. Bennett: You have not physically stricken it. I understand that.

Mr. Reilly: I submit the exhibit is not admissible, first, since the persons who completed the questionnaires are not here—neither the originals nor the duplicates which somebody is willing to

(Testimony of Ronald Oakman.)

swear are duplicates or original counterparts. There is no one here.

Secondly, none of the signators are present to be cross-examined with respect to whether or not they were employees of the air lines, either of the air lines involved in the transaction mentioned or that they were at the time council [2355] chairmen. There is no evidence that they were in unique position to know any of the facts with respect to those transactions. There is no evidence here that they, the signers of the questionnaires, or the witness who is now sitting on the stand, examined the contracts with respect to the transactions mentioned. There is no one present to be examined with respect to any orders which were issued by governmental agencies. I am speaking there of the Postmaster General, or the Civil Aeronautics Board, or any other comparable legislatively enacted administrative body.

The document, in the introduction and all through these documents, in the summation and various other things, there are lines upon lines of pure argument.

And, of course, since the Examiner has ruled on the motion to strike we are not going to cross-examine. But in the event that the Board overrules the Examiner then we will have the opportunity to cross-examine with respect to the arguments and statements contained in this exhibit, and I say that the originals should be submitted together with the offer of proof.

(Testimony of Ronald Oakman.)

Examiner Wrenn: All right. I believe the record is clear on it, that insofar as the Examiner is concerned the motion to strike has been granted and it will not be considered by the Examiner in any of the procedural steps that he may be called upon to carry out.

You are free, Mr. Bennett, you understand, to urge the Board to overrule me on that.

Mr. Bennett: I understand that.

Examiner Wrenn: And they may do it. And I am allowing [2356] it to go along with the record so they will have it before them, and you will have it if they do overrule me on it. Your material will be in the record if they overrule me.

Mr. Bennett: I understand.

Examiner Wrenn: In view of the ruling, are there any questions of this witness?

Mr. Kennedy: May I ask a question?

Examiner Wrenn: Go ahead.

Q. (By Mr. Kennedy): In your investigation of the mergers and acquisitions, did you ever come across one like this one, where only part of an air line had been transferred and the air line had not gone out of existence?

A. I think it is true in Western's background. T.W.A. acquired the Kansas City-Los Angeles section of Western Air. I think generally—American Airlines sold one section of its routes to another air line. I think it is generally true that sections of an air line do——

Q. One you specifically recall is Western's trans-

(Testimony of Ronald Oakman.)

fer of the Kansas City-Los Angeles to T.W.A.?

A. Yes.

Q. Do you recall any other specific one?

A. In the historical past, shall I say, air lines and routes—there were no such things as routes, as I understand them today, such as Route 68.

Now——

Q. Well, now, portion of an operation.

A. I think that Eastern bought a section—but it was a small air line owned by another large air line, the New York—it is referred to here. Just a minute. [2357]

Eastern purchased from Pan American Air Lines the business of New York Air Lines, Inc. That was a segment of Pan American. It was all of New York Air Lines. It was owned entirely by Pan American, however. Now, whether you would call that a route, I would call that a route myself.

Q. Do you know of any others?

A. Those are all that come to my mind at the moment.

Q. Let's go back to the Kansas City-Los Angeles transfer to T.W.A. by Western. What was done with the pilots in that situation?

A. I think they all went with the route. All those who wanted to go with the route. There were some who elected to stay with Western Air Lines, and did so.

Q. What is the source of your information on that?

A. Pilot questionnaires. The only source I have

(Testimony of Ronald Oakman.)

on that, except that the air line has indicated that that happened.

Q. What about the situation on this New York Air Lines? What was done there?

A. I don't know whether I have a specific questionnaire on that.

Examiner Wrenn: Well, now, you are testifying from your knowledge now.

Q. (By Mr. Kennedy): What have you gathered in your research?

A. I don't know specifically. But I think they did go. I can't swear to it.

Mr. Kennedy: That is all I have.

Mr. Reilly: In light of Mr. Kennedy's questions, I want [2358] to ask this question——

Examiner Wrenn: Go ahead.

Q. (By Mr. Reilly): Do you know from your own knowledge whether United Air Lines ever operated Chicago-Dallas?

A. It seems to me they did.

Q. Well, do you know what happened to the pilots in that route when that route was given to Braniff?

A. I was under the impression that they lost that route through the 1934 fiasco, but——

Q. That is correct.

A. ——they didn't sell it or give it or anything else.

Q. Well, in some of these questionnaires you have it was the same thing. I believe you understand that.

(Testimony of Ronald Oakman.)

A. Yes. It wasn't the same thing as Route 68, you will admit.

Q. I don't admit. I am asking you the question. Are you familiar with it?

A. Not as to what the pilots did, no.

Mr. Reilly: I have no further questions, Mr. Examiner.

Examiner Wrenn: Do you have anything further of this witness while he is here, Mr. Bennett?

Mr. Bennett: No.

Examiner Wrenn: Well, now, before I excuse him I want to say to you—and I think it is clear, but I want to be perfectly clear here—that Mr. Oakman is at liberty to testify to anything that he has of his own personal knowledge and his own recollection along this line. The motion applied to the exhibit he sponsored, the testimony about the exhibit. [2359]

Mr. Bennett: I understand that.

Examiner Wrenn: I wanted you to know that.

Mr. Bennett: May we have until the morning to determine what we want to do with reference to that? But I am inclined to feel that we won't do anything.

Examiner Wrenn: All right.

If there is nothing further, you may be excused, Mr. Oakman. Thank you.

(Witness excused.)

Examiner Wrenn: We are changing hearing rooms tomorrow. Tomorrow morning it will be Room 4823 in this same building.

We are adjourned until 10 o'clock tomorrow morning in Room 4823.

(Whereupon, at 5:25 p.m., the hearing was adjourned until Wednesday, November 16, 1949, at 10 a.m.)

Received November 23, 1949. [2360]

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Examiner Wrenn: All right, Mr. Bennett, do you have anything further?

Mr. Bennett: I would like to put Mr. Oakman on. He was on the stand last night.

Examiner Wrenn: I thought I temporarily excused him, but he can be recalled.

Whereupon,

R. L. OAKMAN

was recalled as a witness on behalf of Air Line Pilots Association, and having been previously sworn, was examined and testified further as follows:

Direct Examination

(Continued)

By Mr. Bennett:

Q. You are the same Mr. Oakman who testified yesterday?

A. Yes, sir.

Q. Did you make any study or investigation of the present-day certificated air carriers regarding their corporate history?

A. Yes.

(Testimony of Ronald Oakman.)

When I rejoined the organization, I was assigned the duties that I had before. One of the projects was to familiarize myself with this exhibit. There is a bibliography in the back of it, so naturally in presenting it, I wanted to be sure it was correct, so I made the study of the same bibliography and verified the fact it was correct.

Q. In your investigation and study of the corporate history of the present-day certificated air lines, what did you [2365] discover, if anything, regarding consolidations and mergers that happened, if they did happen, within the organizations of these corporations?

A. I found with very few exceptions, and that is among the smaller and more recently organized lines, that the present certificated air lines are the outgrowth of a series of mergers, purchases, sales of parts or entire air lines in the past.

Mr. Bennett: May I have this marked for identification Pilot's Exhibit 20?

Examiner Wrenn: Suppose you identify it further.

Mr. Bennett: The number is all I wish.

Examiner Wrenn: I can't identify it until I know what it is. All I want is the title of it.

Q. (By Mr. Bennett): Will you look at this document and tell us what it is, please?

A. This is the original material contained in the exhibit formerly known as 17.

Examiner Wrenn: It was later marked as 19, the one you were discussing.

The Witness: Yes, sir.

(Testimony of Ronald Oakman.)

Mr. Reilly: Let us look at it. Mr. Bennett knows we have a right to see it before he asks questions.

Mr. Bennett: Will you identify it?

Q. (By Mr. Bennett): Those documents have the original signature of the individuals who sent them in? A. That is right. [2366]

Mr. Reilly: If you know.

The Witness: I am familiar with a good many of the signatures.

Mr. Reilly: You can recognize them?

The Witness: Yes, I wouldn't say every one I can verify.

Q. (By Mr. Bennett): But a great many you can. A. Yes.

Mr. Reilly: Don't put words in his mouth. Ask him how many he can.

The Witness: There are other things in there.

Mr. Bennett: These are the originals of all of the copies which are contained in Pilot's Exhibit 19?

Mr. Reilly: Before there is any testimony, I would like to test this man's knowledge.

Examiner Wrenn: Wait a minute. He has just identified them.

Mr. Reilly: He is not going to testify until we have an opportunity to examine it.

Mr. Bennett: I would take at the proper time Mr. Reilly can cross-examine this man in any regard he sees fit, is that correct?

Mr. Reilly: If you are going to offer the docu-

(Testimony of Ronald Oakman.)

ment in evidence, I have a right to examine it before any testimony is put in with respect to it.

Who was Howard V. Woodall?

The Witness: He was chairman.

Examiner Wrenn: What are you going to do?

Mr. Bennett: I am going to offer it in [2367] evidence.

Examiner Wrenn: Are you going to ask this witness to testify about it?

Mr. Bennett: I am going to offer it in evidence as being the original documents signed by these pilots.

Mr. Reilly: Is that all?

Mr. Bennett: That is right.

I will offer these in evidence.

Mr. Kennedy: I don't believe they have been given a number.

Examiner Wrenn: I think the state of the record is, if it isn't it should be that it is Air Line Pilot's Exhibit 20. I believe Mr. Bennett made that statement.

Mr. Bennett: I asked that they be identified as Exhibit 20.

Examiner Wrenn: That is my recollection.

Mr. Bennett: We will be clear it is Air Line Pilot's Exhibit 20 marked for identification.

(Air Line Pilot's Exhibit ALP-20, was marked for identification.)

Examiner Wrenn: Off the record.

(Discussion off the record.)

(Testimony of Ronald Oakman.)

Mr. Bennett: I would like to ask one or two more questions.

Q. (By Mr. Bennett): These are all of the original signed documents that you have with you in Washington and that you were able to produce this morning—the copies of which are contained in Exhibit 19, is that correct?

A. That is right. [2368]

Q. Have you examined these documents?

A. Yes.

Q. I call your particular attention to the documents received from those individuals who are pilot members of the Air Line Pilots Association. Did you make an examination of all of those documents?

A. I did.

Q. Did you make an examination of them with particular reference to the statements contained in those documents regarding what occurred to that individual when he was a party to a merger?

A. Yes.

Q. As a pilot? A. Yes.

Q. Will you tell us, please, what you discovered with reference to that particular factor?

A. I found that on these questionnaires every pilot who had answered, without exception, had testified to the effect that in mergers and consolidations the pilots had always gone with the line that had been sold, in the new consolidating company.

Q. Did these consolidations about which the pilots' statements are made—were they the same consolidations your studies indicated had taken

(Testimony of Ronald Oakman.)

place in the air line industry and in the present-day certificated corporate air carriers?

A. It doesn't mention them by name, but they are all mentioned as historical mergers in the past.

Mr. Bennett: You may cross-examine.

Examiner Wrenn: Mr. Crawford? [2369]

Mr. Crawford: No questions.

Examiner Wrenn: Mr. Renda?

Cross-Examination

By Mr. Renda:

Q. Do you know Mr. Homan, pilot for Western Air Lines? A. I have met him.

Q. Referring to A.L.P.A. Exhibit No. 21, did Mr. Homan sign that in your presence?

A. No.

Q. Do you know on what date that was signed?

A. I would say around the first of the year.

Q. Can you tell by looking at the questionnaire?

A. Not that particular questionnaire, no.

Q. Why?

A. Because there is no date there. They were sent out in January and returned in February in every instance.

Q. I show you another questionnaire allegedly signed by Mr. W. T. Homan. Can you tell me what date that was signed on?

A. No, but as I say, I say it is the first of the year.

Q. No date appears on the questionnaire?

(Testimony of Ronald Oakman.)

A. No, however, the original was filed in March, so we know it was prior to that.

Q. From this document you can't tell me?

A. No.

Q. If you please, turn to the questionnaire signed by Mr. Homan which deals with the merger of Western Air Express Corporation with Transcontinental Air Transport. A. Yes. [2370]

Q. Do you know if at that time ALPA represented pilots for Air Express?

A. They did not.

Q. There was no problem of seniority at that time in existence, was there?

A. In the present-day sense of the word, there wasn't a seniority list, if that is what you mean.

Q. And any arrangement that was made was a result of the desire of pilots to transfer with the new company and the willingness of the new company to accept them?

A. I don't know what you mean by that question.

Q. Was there anything obligatory on the part of either party that arose by any contract or any other means?

Mr. Bennett: If he knows, I take it.

Mr. Renda: Yes.

The Witness: There was nothing obligatory on the part of the pilots to go with the line.

Q. (By Mr. Renda): Was there anything obligatory on the part of the company to accept the pilots?

A. Outside of social policy and precedents, I don't think there was any, but I don't know.

(Testimony of Ronald Oakman.)

Q. Please turn to the next questionnaire signed by Mr. Homan dealing with the purchase of National Parks Airways by Western Air Express; do you know if in that case Western Air Express acquired a portion or the entire operating route or routes of the National Parks Airways?

A. I would say that they acquired a route.

Q. Was there anything left after Western Air Express [2371] acquired that route that you speak of? A. I doubt it.

Q. Isn't it a fact they acquired the entire company?

A. In that particular instance they acquired National Parks Airways.

Q. That situation is not analagous to the situation here, Route 68?

A. Do you want me to answer that question?

Q. Yes.

A. I think it is. In the first instance, when you are selling Route 68 for a given amount of money, you are not selling just airplanes or trackage. There is no way of putting a valuation on the item other than as a business. I would say that in this case, just as in the sale of Route 68, you were selling a business or a route, whichever you prefer to call it. I think that they are directly analagous.

Q. No, Mr. Oakman, in this particular case, Western sold a route and after selling that route, it still had more than 4,000 operating route miles. In the case of National Parks Airways, National Parks sold its entire route or routes to Western Air Express; there was nothing left, was there?

(Testimony of Ronald Oakman.)

A. That is true. There was nothing left to Route 68 when you sold it.

Q. Was there anything left of Western Air Lines? A. Of the other routes, yes.

Q. I don't care to proceed with that.

Examiner Wrenn: I thought you were framing a question.

Mr. Renda: I did. I would just as soon let the record [2372] stand as it is.

Examiner Wrenn: Go ahead.

Q. (By Mr. Renda): Turn to the questionnaire which deals with the acquisition of Inland Airlines, by Western Air Lines. Are you familiar with that transaction?

A. Infrequently or through talking to parties who were.

Q. Do you know when the Board approved the acquisition of Inland Airlines by Western Air Lines?

A. Approved it?

Q. Yes. A. I thought it was 1944.

Q. Do you know if in that case there was a joint submission on the part of pilots of both presented by ALPA advising the Board that there was no dispute and complete agreement had been reached with respect to the dovetailing of pilots and the establishment of their respective seniority?

A. You don't know the answer to that?

Q. I am asking you if you know. I know the answer.

A. They went into Western Air Lines without

(Testimony of Ronald Oakman.)

any question, therefore there wasn't any necessity for that.

Q. Isn't it a fact that the Board withheld approving the acquisition of the assets of Inland by Western until such time as the ALPA had advised the Board with respect to agreement having been reached between Western Air Line pilots and Inland Airline pilots? A. I don't really know.

Q. I invite your attention to Paragraph (c). It indicates that there was a mutual agreement, no problem; is [2373] that correct?

A. That is right.

Q. Are you familiar or do you know that within the last 90 days a group of pilots of Western Air Lines have filed a grievance with Western Air Lines alleging that they were not a party to the mutual understanding between the Western Air Line pilots and the Inland Airline pilots and therefore they are not bound by that agreement, and as a result of that agreement, they were adversely affected in their seniority rights?

A. Am I aware of that?

Q. Yes. A. No.

Q. So I presume you are not aware of the fact that that case has been set for hearing before the Western Pilots System Board of Adjustment?

A. That is correct.

Examiner Wrenn: You mean you are not aware of it?

The Witness: Yes.

(Testimony of Ronald Oakman.)

Examiner Wrenn: All right, Mr. Reilly, you may examine the witness.

Cross-Examination

By Mr. Reilly:

Q. Mr. Renda has already asked you about the answers to the questions filed by Mr. Homan. As you note, there are no dates. Do you know why there are dates on copies submitted for the record?

A. There is a date on the first one, February 10th.

Q. What is the date on the other one?

A. They came together. [2374]

Q. Why are the others dated February 11th?

A. This was the date he sent them to us.

Q. Just a minute, please. Look at these copies. One is February 10th.

A. That is correct.

Q. What is the date on that one?

A. That is the 11th.

Q. What is the date on that one? A. 11th.

Q. Do you still want your testimony to state that they were all sent together on the same date?

A. That could be. This, of course, is his date on here.

Q. Whose are the other two dates? Are they yours? A. Here is the difficulty.

Q. Answer my question.

Mr. Bennett: Give him the opportunity to answer the question. He can't answer five questions.

(Testimony of Ronald Oakman.)

Examiner Wrenn: I would like to know what documents you are talking about.

Mr. Reilly: We are talking about the three answers presumably submitted by Mr. Homan of Western Air Lines. One of the original documents is dated February 10th. The other two have no dates, but on the copies submitted prior to the hearing there is a date of February 11th.

Examiner Wrenn: All right, now you may answer.

The Witness: I think I can answer that. It is due to oversight more than anything else. These questionnaires were pencil-written and they were sent back for the pilot to re-answer. [2375]

Q. (By Mr. Reilly): I thought I noticed one that was in pencil.

A. Not in his; in some instances they weren't.

Q. Is it your testimony there wasn't any consistent procedure for the handling of them, if you know? Were you with the ALPA in February, 1949?

A. No, I wasn't.

Q. Answer the question.

Examiner Wrenn: Read it.

Do you know?

The Witness: Inasmuch as these are all typed on various typewriters which I know not to be ALPA typewriters—if that is what you mean.

Q. (By Mr. Reilly): I don't mean anything.

A. I am familiar with the fact that some of them did come in scrawled and unreadable simply because they were done hastily.

(Testimony of Ronald Oakman.)

Q. How do you know that of your own personal knowledge?

A. In investigating this question, I saw those original questionnaires.

Q. Why didn't you submit those originals as long as you submitted originals in other pencilled handwriting? A. I don't find any in here.

Q. What is that?

A. That is probably the one exception.

Examiner Wrenn: Let us get it identified in the record.

Q. (By Mr. Reilly): Tell which one that [2376] is.

A. That one came in February. It is signed by Duncan of United Air Lines.

Q. Do you want to stand on that testimony that it came in later than the others?

A. That could be the answer.

Q. Will you look at the answer——

A. As far as there being a uniform method, the idea was to get this into a neat document. That there were a few exceptions, I don't think changes that at all.

Q. You said it came in in February and that was a little later than the others.

A. Supposing I did say that, it was later than some of them.

Q. It was? A. Yes.

Q. Show me which ones it was later than.

A. The date is early.

(Testimony of Ronald Oakman.)

Q. You have made a complete study of these questionnaires, haven't you?

A. I wasn't particularly concerned about the dates.

Q. You testified in answer to a question on re-direct by Mr. Bennett that you had examined these questionnaires and that every one of them, with maybe an exception, indicated that the pilots signing the affidavits, and the record can be read back to see if I am correctly quoting the question and answer, showed that that pilot went with the route.

A. Did I say everyone?

Q. No, you said there may be some exceptions, you said the pilot who signed the questionnaire had gone with the [2377] route.

A. I don't think the statement was made that way.

Q. State it. A. The record will show.

Q. State what the record will show.

A. I don't know if I am exactly capable of doing that.

Examiner Wrenn: Let us not argue the matter. Did Mr. Reilly paraphrase your testimony correctly?

The Witness: With the exception that I didn't say that every signature was identifiable by myself as being the pilot's signature in every case. That is the exception.

Examiner Wrenn: All right.

The Witness: As far as the merger and the pilots going with the line, I would say with very few

(Testimony of Ronald Oakman.)

exceptions, they indicated that the pilot did go with the line.

Q. (By Mr. Reilly): Can you find in the answer to any one of the questions a statement by the signer that he, at the time of the transaction which is the subject matter of the particular individual questionnaire, was with the air lines involved or that he, himself, had gone with the air line or had stayed back?

A. The question wasn't put that way, so naturally they wouldn't answer that way. The question was did the pilot go with the line. It was answered by people familiar with the details.

Q. Is there anything that indicates that the person who signed the document had any familiarity?

A. It says that in the opening paragraph. I would say [2378] that indicates knowledge of it. It doesn't indicate he himself was a party. In some instances they said "I was a party to this merger."

Q. Do you want to find those for me?

A. If you want to take the time.

Q. I sure do.

A. As an example, if a pilot was a member of an existing seniority line and part of an air line was acquired, he would be a party to that, would he not?

Q. Show me where any pilot says that he was involved in the transaction? Find any place in any one of these questionnaires.

A. You want me to answer?

Q. Yes, I do.

A. This man, Chaplin of Capital Route 32 left

(Testimony of Ronald Oakman.)

American because of curtailment; went with Thompson Aeronautical Corporation. Continental Airlines bought or absorbed Universal.

1929 seniority dovetail continued. 1929 left American because of curtailment. Went with Thompson Aeronautical Corporation. Seniority recommenced with them. They became Trans-American Airlines. Then again in 1935. It says left American to work with Pennsylvania Central.

Q. Find another one. A. 44.

Q. What is Chaplin in?

A. The page number is 35.

Mr. Renda: I don't have one by such name.

The Witness: Some of these boys wrote on the back.

Examiner Wrenn: Off the record. [2379]

(Discussion off the record.)

Examiner Wrenn: Is it Chaplin or McClaffin?

The Witness: Chaplin.

The next one is on page 44. Joseph B. Kuhn, counsel 51, page 44. "We were placed at bottom of the captain's seniority list in accordance with the hiring date of Ludington." That is first person. I think in every instance they refer to the pilots as themselves.

Q. (By Mr. Reilly): They will speak for themselves, won't they? A. Yes.

Q. Let me ask you another question. You didn't have anything to do with the preparation of this?

A. No.

(Testimony of Ronald Oakman.)

Q. When did you terminate your employment with ALPA prior to your recall?

A. Just a little after the transfer of Route 68.

Q. You mean the actual transfer, September, 1947?

A. Yes. I left in November.

Q. November?

A. End of November.

Q. Then you came back in July of this year?

A. Yes. Did you get the last one?

Q. Yes.

A. Then there is the letter from A. J. O'Donnell of counsel 10 which is page 47 in your book. That is a first-hand account. He said "In this same year we brought in a large group of Pan American Air Ferry Pilots." I think Tony was [2380] connected with Pan American at the time that these transactions took place and he was familiar with what took place.

Mr. Reilly: I won't belabor this. I believe I understand what he considers to be his personal knowledge.

Examiner Wrenn: All right.

Q. (By Mr. Reilly): Do you know of your own knowledge whether any of these, except for those which speak in the first person, had any personal knowledge of the facts on the questionnaire except as were indicated in the answers?

Mr. Bennett: I would say that the questions speak for themselves.

Mr. Reilly: I was trying to save time.

(Question read.)

(Testimony of Ronald Oakman.)

The Witness: Yes.

Q. (By Mr. Reilly): Will you amplify that? Maybe we can do it by question and answer and save time. Which of these pilots except those that indicate it in the answer to the question were in the counsel or employed with the particular air line at the time of the transaction? A. All right.

Q. For example, take Mr. Fallon. Do you know whether he was employed with United Air Lines?

A. Not at the time of some of the early transactions.

Q. On his questionnaire he refers to Mr. Behncke.

A. He does indicate some information on the matter.

Q. He suggested you get better information from Mr. Behncke—— [2381]

A. Mr. Stephenson of Western Air Lines.

Q. He has been around a long time?

A. Yes. Mr. John Murray of United Air Lines.

Q. He has been around a long time, too?

A. These are only those that I know of my own knowledge were there.

Q. That is all I wanted to know.

A. D. W. Richwine, TWA, wasn't there on some of those early transactions. I think he was on the Market Airlines deal. O'Donnell, I am sure, was there.

Q. Do you know what kind of planes they were flying? A. No.

(Testimony of Ronald Oakman.)

Q. If I told you they were flying Stinsons three times a week, would you accept that subject to correction? A. I wouldn't know.

Q. Let me ask you another question if I may. Do you know whether or not any of these signers were familiar with the contracts which were the subject matter of the transaction involved?

A. Between the two merging companies.

Q. For example, if you will look at page 62——

A. I don't think this will give that information.

Q. John Murray says "Boeing Air Transport was consolidated with United." Actually that isn't correct. It actually never was consolidated.

A. It is now.

Q. They are part of the same thing. [2382]

Did you ever have an opportunity to study the contracts which are involved in this questionnaire?

A. The sales contracts?

Q. Yes. A. Not personally.

Q. Then with respect to the study made by Mr. Pasowicz, except for the bibliography, did you ever go into the contracts of sale?

A. The fact that they sold is a published fact. You don't have to look at the bill of sale to know that we have United Air Lines that started as a different air line.

Q. It might help you as to what provisions were made for the employed.

A. I doubt it. Do you think it had them?

Q. I have seen contracts that have it.

(Testimony of Ronald Oakman.)

A. Very few contracts had provisions in them; of course, especially earlier ones.

Q. Do you know why Mr. Pasowicz has not been made available to testify?

A. I don't know except that he isn't an employee of the association any more.

Q. Do you, of your own knowledge, know why Mr. Pasowicz used an address other than ALPA to return the questionnaire?

A. I think an inferential answer may be drawn from the testimony of Mr. Rengel.

Q. He didn't testify there was some question?

A. He indicated we wouldn't have gotten the same answers.

Q. You have an exhibit when Mr. Behncke, Mr. Patterson and [2383] Mr. Herlihy exchanged information in 1940? A. That is right.

Q. You know that Mr. Behncke has never had any difficulty in getting an answer to a questionnaire from air line pilots?

A. This was not conducted by Mr. Behncke.

Q. It was under his supervision?

A. He doesn't have time to do that.

Q. They wouldn't have been written if Mr. Behncke didn't know about it?

A. If it was a personal letter from Mr. Patterson to Mr. Behncke, you would get a right answer.

Q. Mr. Behncke doesn't have time to write letters?

A. He writes more probably than the average person.

(Testimony of Ronald Oakman.)

Q. See if you can answer this: Do you know of any instance where the ALPA has requested information from United Air Lines, from the management side, which has been denied to them?

A. I didn't mean to infer that United Air Lines really would have denied us the information. I think that I recently sent for a copy of your medal-winning financial report and got it with my own signature.

Q. They were probably very happy to send it to you.

A. It was a good one. I don't know of any instance where it was denied, but I frequently get mail myself that I don't care to answer because I don't know whether I am contributing to a real cause or not.

Q. That is our trouble with this one.

A. All of our questionnaires come to the Research or [2384] Public Relations Department and I would assume that that is where I would send a question of that nature to your company even if it were on ALPA stationery. I don't think it is misdirected. I wouldn't write to Mr. Patterson, I don't think.

Mr. Reilly: That is all I have.

Examiner Wrenn: Mr. Kennedy, do you have any questions?

Mr. Kennedy: No questions.

Examiner Wrenn: Do you have any more of the witness, Mr. Bennett?

Mr. Bennett: No questions.

At this time, if the Examiner please, I would like to offer in evidence the Exhibits 1 through 20.

Examiner Wrenn: This completes your case?

Mr. Bennett: That is correct.

Examiner Wrenn: I believe there was an indication yesterday that there would be an objection to this part of Exhibit 17 which was compiled after the——

Mr. Bennett: It was never filed in this case.

Examiner Wrenn: What do you mean when you say it was never filed?

Mr. Bennett: It was not filed previously in this case.

Examiner Wrenn: Very well.

Mr. Bennett: In that regard, I would still offer the exhibit as originally filed, and I would offer the substitute also, including the data which brings the exhibit down to date.

Examiner Wrenn: Let me ask you a question in that regard here now. I believe Mr. Unterberger prepared and you distributed to the parties Monday morning sheets on Exhibits 2 through [2385] 17, I believe it is.

Mr. Bennett: That is right.

Examiner Wrenn: Were those to be substituted for the corresponding sheets in the documents which you distributed to the parties some time ago?

Mr. Bennett: Have you the ones we attempted to substitute?

Examiner Wrenn: Yes.

Let us take the documents you distributed Mon-

day morning. The first sheet says Exhibit 2. When I look at that and compare it with the sheet marked Exhibit 2, page 3 in the volume that you distributed some time ago, they look the same to me with the exception that 1949 has been added. My question is, in this particular instance, is this sheet 2 which contains 1949 to be substituted for Exhibit 2, page 3, which you distributed originally?

Mr. Bennett: May we go off the record?

Examiner Wrenn: All right.

(Discussion off the record.)

Examiner Wrenn: On the record.

The record will show in the off-the-record discussion, Mr. Bennett was explaining the mechanics of the exhibits in regard to the question I just addressed to him.

Mr. Renda, you indicated yesterday you were going to make some objection. Would you at this time give us your specific objection?

Mr. Renda: I will be glad to.

I have no objection to substituting the new material, Exhibits 2 through 16, to the extent they duplicate only what [2386] was originally submitted and filed under date of June 7, 1949. My objection, specifically, is to the additional material which pertains to 1949 data set forth on Exhibits 2 through 16 and all of Exhibit 17.

All of this information, Mr. Examiner, is information which should have been submitted with original exhibits. If you will recall, we were prepared to go to hearing in this case in January of this year.

There was some objection to the type of exhibits ALPA had presented. After some time, some agreement was reached.

I am not able to justify in my mind any delay in making this information available to the carriers prior to the date on which this hearing was commenced. I think it is too much if we have to meet that sort of data. We are not prepared to meet it. I would like to renew my objection and move that data with respect to 1949 shown on Exhibits 2 through 16 and all data on 17 be not received in evidence, and I move that all the testimony given by Mr. Unterberger on direct or cross with respect to 1949 be deleted.

Examiner Wrenn: I would like to be clear on one thing, Mr. Bennett. Mr. Unterberger is here, and it may be we will have to call him up here if the parties want him to answer it rather than you, as to what this 1949 data consists of. As I understand it, Mr. Unterberger testified and gave certain conclusions on the basis of the material that he had submitted through 1948 originally.

Mr. Renda, of course, can agree or disagree with that. That is his privilege. What I want to be sure about is this: Is the 1949 data that Mr. Unterberger added there for the [2387] same purpose—merely bringing up to date the information that he had previously shown—or did he draw new conclusions from the 1949 data? If you want to answer or if the parties want Mr. Unterberger on the stand, I am willing to bring him back.

I would just as soon have counsel make a statement.

Mr. Bennett: The record should indicate the answer to the Examiner's question. However, Mr. Unterberger is here and I have no objection to his answering it if he will.

Examiner Wrenn: My only point is this: Is this data merely a bringing up to date of the information in evidence? I am assuming you have a stipulation circulating around here, which I haven't certainly seen, but I am sure it is in line with the usual run of stipulation; it provides for bringing certain data along or keeping it current until the Board's decision in this case. If it does, I am hard-pressed to see much difference between this and that material. Is the situation I have just stated true?

Mr. Renda: Except, Mr. Examiner, that time and time again, Mr. Unterberger referred to the trend with respect to 1949 which was new material that we were not prepared to meet. And time and time again, he made reference to Exhibit No. 17 which is the catch-all exhibit, with respect to all of the percentages. No persons have checked the accuracy and seen what the computations are.

No party should be made to meet this type of statistical data so late.

Mr. Kennedy: You are correct on the subject of the stipulation. That has been stipulated it complies with the Form 41. [2388] It has been signed by all parties. As I understand it, this data is just taken from those sources. As to Mr. Unter-

berger's mathematics, they can be checked very easily and it is not any matter that requires any testimony or cross-examination. As to his inferences, it seems to me that his testimony was such that inferences could not be drawn from the testimony. They were plain on the face of the figures.

Examiner Wrenn: What I want to be sure about is that Mr. Unterberger's testimony, as established by the statistics he introduced in 1947, 1947, is that the pilots have been adversely affected and that conclusions were based on those data. Was the addition of the 1949 data merely bringing it up to date, or was he drawing some new conclusions?

Mr Bennett: The record will indicate his conclusions on all of the data, but if you want my opinion of what his conclusions were, it was merely bringing this entire matter up to date.

Examiner Wrenn: Did any counsel understand Mr. Unterberger's testimony differently, and do you want to ask him any further question? I want the matter to be clear. My point, Mr. Renda is this: If the situation is as I have stated my understanding of it, it seems to me your objection is purely technical. I don't see that it changes the net result any. If he had different conclusions and used it for a different purpose, then your objection has considerably more weight with me.

Mr. Renda: Technical as it may be, it is still prejudicial to the rights of Western Air Lines. If we are compelled to meet on the day of the hearing data submitted to us for [2389] the first time, it is not fair.

We analyzed the exhibits. My cross-examination was limited to the years 1946, '47 and '48. I did not go into the 1949 data and I am not prepared to do so at this time. I think it is unfair if you receive this type of exhibit in evidence. I object to the receipt of this evidence for the reason that predicated on this data, Mr. Unterberger has made certain conclusions.

Time and time again he pointed to 1949 in establishing a point he was trying to prove with respect to 1946 and 1947.

Mr. Reilly: United signed a stipulation. As I understand it, the theory of Mr. Unterberger's testimony is that the pilots were affected and they continued to be adversely affected. I agree with Mr. Renda that the data should have been submitted more seasonably, but we are not going to object to the exhibit on that ground.

We do believe that United and Western should have an opportunity to submit data after the hearing has adjourned and the record be kept open if United or Western or if any party in the proceeding desires to contradict or find mathematical corrections to be made. Mr. Unterberger is good at it, but he agreed he made one error and he is liable to make one more.

Mr. Bennett: Data is always subject to be impeached by error or whatsoever, whether it is 1947 or 1949. The 1949 data consists merely of figures always in the possession of the company. Certainly if the figures are correct, the conclusions to be

drawn from it are the same in 1946 as they are in 1949.

Examiner Wrenn: Do you have any objection to the [2390] suggestion Mr. Reilly made that United and Western be given an opportunity to answer to this within a certain number of days?

Mr. Bennett: If they find something incorrect.

Examiner Wrenn: Yes.

Mr. Bennett: I have no objection. By the same token, I take it the Air Line Pilots Association would be in a position to file an answer to the very recent one that they filed, their rebuttal exhibit.

Examiner Wrenn: We can't carry this thing on forever. It has to stop somewhere.

Mr. Bennett: I would like to stop some place. There the rebuttal exhibit was filed very recently, I don't know when it was.

Mr. Renda: It was filed a month before this hearing.

Examiner Wrenn: I won't make any arrangement of that kind now.

Mr. Bennett: In any event, should they file an answer, I would be in a position to rebut that if I found their answers had errors and mistaken conclusions in it, I take it?

Examiner Wrenn: No, I am not going to have this record show any agreement to keep on filing continually one way or another. We are going to have to close it up. I asked you a question and I want an answer to that so I can reach a ruling. I seem to get the inference from you that you are not going to agree to it unless you have a right to

file something further and they will want a right to file something further, and so what have we accomplished by having a hearing if we continue debating for another year?

Mr. Bennett: I say this: If there are any errors in [2391] computation on that document, I certainly have no objection to Western or United pointing them out and drawing any conclusions from that that they so desire. I have no objection to that. I think that is their right.

Mr. Renda: Mr. Examiner, in my opinion it goes beyond the scope of errors. If these data were taken from the Forms 41, as reported here it is a matter of taking down figures. There can't be much error there. This man has testified, in my opinion, with respect to certain conclusions that he arrived at as a result of these data in 1949 and this compilation in Exhibit 17. I wasn't able to meet that. I wasn't prepared to meet that. I avoided it immediately so I could make an objection at this time. I want to stand on this motion.

Mr. Bennett: So far as the conclusions drawn to the 1949 data by Mr. Unterberger, certainly if Mr. Renda or United Air Lines can refute that in their briefs and show how the conclusions that Mr. Unterberger has drawn from the 1949 data is completely in error they can do so. I have reference only to the exhibits. I think that is the question under consideration is should the exhibits be admitted? I am asking that it be admitted in its entirety.

Examiner Wrenn: Does the presence or lack of presence of the 1949 data affect the conclusions

and the evidence of the Airline Pilots Association with respect to these exhibits?

Mr. Bennett: Only that it brings it up to date. It shows that the trend, as Mr. Unterberger said, continues the same as it started out or at least it continues.

Examiner Wrenn: Very well. Are there other objections [2392] to the exhibits?

Mr. Renda: I have another objection, not on this same exhibit, but on another exhibit.

Examiner Wrenn: Yes.

Mr. Renda: First I move that the entire exhibit not be received in evidence, Exhibit 20, on the basis that Mr. Oakman is not qualified to testify with respect to the data contained in these questionnaires. He is not familiar with the transactions——

Examiner Wrenn: I thought the only reason it was offered was that Mr. Reilly had requested yesterday in connection with Exhibit 19 that he receive the originals. I think Mr. Bennett was complying with his request.

Mr. Reilly: The difficulty there is that Bennett asked some questions with respect to it and as a result of those questions, I asked some. I am going to support this questionnaire more fully, if Mr. Bennett will concede the only reason he introduced it was because of the request I made yesterday.

Mr. Bennett: No.

Mr. Renda: I thought he called Mr. Oakman back because he wasn't able to qualify him to get the information in the case. He laid a foundation

because he studied this data and asked him what had been heretofore not allowed.

Examiner Wrenn: Is that your purpose in offering it?

Mr. Bennett: It is.

Mr. Reilly: Let me be heard on the motion in support of it.

Mr. Bennett: In support of the introduction?

Mr. Reilly: In support of the motion. [2393]

There isn't any question that inherently questionnaires are hearsay. There isn't any question in the world about that. These questionnaires have the further difficulty and the further deterrent as good evidence that they are hearsay upon hearsay because the questionnaire, if Your Honor please, is a loaded questionnaire. The questionnaire is almost filled with leading questions.

There is nothing in the questionnaire that directs the attention of the signer of the document to whether or not he has personal knowledge. The one honest thing is whether or not he or anyone in his council has knowledge. Therefore we are dealing with hearsay upon hearsay and for that reason alone, the answers to the question are objectionable. There is no identification of the signatories. Mr. Oakman says because of the result of some correspondence, he could identify the signatures.

What we are talking about are the exhibits and a study which has been prepared—the result of a witness who is not here; a witness whose failure to be present is not explained.

Examiner Wrenn: We struck all that.

Mr. Reilly: If that motion is still in effect, I will stop talking about it. I object to the receipt of the document and support the objection of Mr. Renda.

Examiner Wrenn: I don't understand your statement "if the motion is still in effect." 19 is stricken and the testimony is stricken.

Mr. Reilly: He re-offered it today.

Mr. Renda: He tried to circumvent that by this offer. [2394]

Examiner Wrenn: I didn't so understand.

Mr. Bennett: May I indicate my position?

Examiner Wrenn: All right, yes.

Mr. Bennett: As I understand the record, the exhibit which was offered was objected to and the objection was sustained.

Examiner Wrenn: That is right.

Mr. Bennett: This is not the same exhibit. These are the original statements without the conclusions as drawn by Mr. Pasowicz therefrom. These are the original statements or questionnaires, if you please, that were signed by the individual pilots and these are their signatures. It is these documents that I offered in evidence as being the original questionnaire signed by the pilots themselves for whatever they are worth in this case that I offer it in evidence at this time.

Examiner Wrenn: That is not only in compliance with Mr. Reilly's request?

Mr. Bennett: Not only, but it is also an offer of

these documents in evidence. Let me make myself clear.

Examiner Wrenn: Go ahead.

Mr. Bennett: As I understand this character of hearing, as you indicated to me yesterday, the strict rules of evidence do not hold for one thing. On the other hand, it seems to me that it would be a terrific hardship upon a litigant here to bring in these 40 pilots to Washington, D. C., and sit them on the stand and question them with reference to what happened to them in these consolidations. Maybe if we have to do that, it would be incumbent upon us to do it and maybe we would do it. These are the original documents signed by the [2395] pilots themselves and they are offered for whatever their value be upon the facts. These are their statements over their signatures. It would seem to me those facts should be in the record and the Examiner should want them in. It is for that reason that I am offering them. I still offer them.

Mr. Reilly: Mr Examiner, as I said when I started out, these are hearsay upon hearsay and I defy in any administrative proceeding which has been dealt with by any higher court for Mr. Bennett to find, as a lawyer, a case where the case was bot-tomed alone or substantially on hearsay evidence to which an objection has been made. These don't have as much as a jurat to them.

I don't know they were signed. There is nothing indicating they weren't signed in Chicago. There is no testimony of the knowledge. The exhibit indicates he doesn't have to have personal knowledge to sign it. The one case within my memory that

came before this Board, where the case of hearsay evidence in the use of questionnaires was laid before the Examiners in the Board with strength, was in the original Kansas City-Memphis case and the Board did not permit the receipt. The Examiner did not permit the receipt and it was sustained. If you open the door for this kind of evidence, and for the lawyer to say put them in for what they are worth, it is like hitting a man on the top of the head and saying "That didn't hurt, did it?"

I support the objection to the receipt in evidence.

Examiner Wrenn: Are there any further objections to the documents which have been tendered?

Mr. Bennett: Mr. Examiner, before you rule upon it, may [2396] we have a five-minute recess?

Examiner Wrenn: All right, we will have a five-minute recess.

(Short recess.)

Examiner Wrenn: Come to order, gentlemen. Are there any other objections to these exhibits before I rule?

Mr. Reilly: I would like to move to strike the argumentative data or conclusions which are contained in the explanatory narrative in Exhibits 2 through 16. Mr. Unterberger was present on the stand and I believe most of the conclusions might have been covered in examination, but I move to strike those parts which contain conclusions, opinion and argument.

Mr. Kennedy: What Mr. Unterberger did was to adopt those explanations as his direct testimony.

They could have gone in as direct testimony, and it seems to me they did.

Mr. Reilly: I don't agree with that, but I will abide by the Examiner's ruling.

Yesterday I moved to strike Exhibit 19. I renew that motion, and in light of the offer by Mr. Bennett, I, of course, object to its introduction in evidence.

Mr. Renda: Is that the Burlington formula exhibit?

Mr. Reilly: No, it is the study of the merger.

Mr. Bennett: Also 20.

Mr. Reilly: I have already objected to 20 for the reasons stated.

Mr. Renda: I join Mr. Reilly on that motion with respect to Exhibit 19.

Examiner Wrenn: All right.

Mr. Reilly: I have no objection to the Burlington formula [2397] exhibit.

Examiner Wrenn: Mr Bennett?

Mr. Bennett: If the Examiner sees fit to strike both 19 and 20 which are offered here, that leaves us in the position of having one phase of our case which we think is highly important without any substantiation in the record. Under those circumstances, I am going to ask that we be given time and opportunity to bring and present in this hearing a sufficient number of pilots or individuals whose experience in these consolidations and mergers can be placed in the record to demonstrate conclusively that in all consolidations and mergers, the pilots have in the past followed the route.

As I understand the purpose of filing exhibits before a hearing goes on, it is to give parties on the other side time to examine them and decide if they are going to be acceptable. Mr. Renda indicated as much so we could fortify ourselves in the event the exhibit was not going to be acceptable.

In the instance of Exhibit 19 and now 20, we had no such indication. As a consequence, we didn't bring these pilots or individuals in to appear personally. We were taken by surprise in that regard. As a consequence, if these exhibits are to be stricken from the record, then we wish an opportunity to bring these individuals in or enough of them to demonstrate our position to the satisfaction of the Examiner. In that regard I would like the record to remain open to receive such testimony at a later date.

Mr. Renda: I am not going to say very much in reply to what Mr. Bennett has just said. I want to point out that we are going to object and object most vigorously to any move which will prolong this case any more. It has been on the [2398] docket long enough as it is. We have come to a hearing stage. The ruling should be with the thought in mind that we are going to close this case and set a date for the receipt of any data which should come in to supplement this. I certainly don't want to go through another hearing on it.

Mr. Reilly: I want to address myself to the remarks of Mr. Bennett with respect to the distribution of exhibits.

1. He, at no time, has distributed copies of ex-

hibits to me at the same time he sent them to the Examiner.

2. Mr. Bennett is apparently a lawyer and he knows or should know that the exhibits regardless of what kind of proceeding he is involved in are subject to objection because of their inherent hearsay quality.

3. The exhibits which I have addressed myself specifically to were exhibits prepared under the supervision and direction of Mr. Pasowicz. We had reason to believe—and there has never been any reason not to—that he would be available for cross-examination. He is not here. The burden of proof is upon the Air Line Pilots Association. It is conceded by Mr. Bennett at every stage in this proceeding. I want the record to show, had Mr. Pasowicz been here, he could satisfy me as to the study.

Mr. Bennett: I might make one further statement, if I may.

Examiner Wrenn: Go ahead.

Mr. Bennett: At the close of my case which would in the ordinary course of things be at the acceptance or rejection of all of my exhibits, it had been my intention to make a [2399] statement regarding another phase of this case which I think would be appropriate for me to make at this time. That statement is as follows: The Air Line Pilots Association, with insignificant exceptions, represents all of the American flag line air pilots, both continental and domestic. In this case we represent the pilots of both companies as has already been indicated in the record, United Air Lines, Western

Air Lines and Council 57 of the United Air Line Pilots.

The pilots of Western Air Lines and United Air Lines and their representing organization are all of one mind and in complete agreement on the long-established policy and the principles which these two exhibits which we are now arguing about presumes to demonstrate, that is, that the pilots follow the line in a merger or consolidation.

In this case, the United pilots and Western pilots are unalterably of this opinion. There never has been any question about the principles. We want to inform the Examiner in this case at this time that the United pilots and Western pilots have, by agreement, submitted to arbitration the question of the number of pilots and the identity of the pilots who will be recommended to be transferred in this case. This arbitration will shortly be held in Los Angeles, California. The National Mediation Board had been requested by both of these groups of pilots, Western and United, through their representative, the Air Line Pilots Association, to select a neutral referee to determine the question as between the pilot groups of the number and the identity of the pilots which they both will recommend be transferred.

Both these groups of pilots have agreed that they both [2400] have a material interest in a fair and equitable settlement of this question of how many pilots and the identity of these pilots who are going to be transferred as a result of the transfer of 68. The number they recommend will be transferred

and their nature and character, due to the long lapse of time and the other conditions of the CAB's approval of the route 68 phase of United Air Lines can only be settled by these two groups in arbitration.

In the light of this development, which is in accordance with an action taken by the last meeting of the ALPA Executive Board, all the air line pilots' differences among themselves shall be settled in this character of arbitration. United Air Line pilots, as represented by the Air Line Pilots Association, and the United Air Line pilots' Council 57 have agreed to have this statement made and I speak for both of the groups of pilots with their specific permission and consent. I also speak for the association, the Air Line Pilots Association of which they are a part.

I was going to ask, as I ask now, for the Air Line Pilots Association, representing both groups of pilots, Western and United, including United Air Lines pilots from Council 57, that we recommend to the Examiner in this case that within 30 days from this date, we will have completed the arbitration proceedings now in progress. It is to be held on November 28, 1949, after which we will submit to you, and I might add also to Western and United, if they desire it, the arbitration decision that I have described which will inform you, and Western and United, of the number and the identity of the pilots which we recommend, both United Air Line pilots and Western Air Line [2401] pilots and the Air Line Pilots Association, be transferred as a result of the sale of Route 68.

At that time, we would urge and request that you take this number and identity of pilots and include them in your decision.

In view of that peculiar situation, I think both Western, United and the CAB and you, Mr. Wrenn, I am certain the Air Line Pilots Association are most interested that Western and United pilots come to a complete understanding between themselves with reference to how or who should be transferred if the CAB would desire to transfer them.

Under those circumstances, I request that this case be held open for a short period of time to receive that recommendation, which is impossible at the moment to make. At that time we could also bring in enough witnesses to demonstrate the point that is sought to be demonstrated by Exhibits 19 and 20, and I so ask the Examiner to allow the record to remain open to receive that testimony and also to receive the arbitrations or recommendation.

Examiner Wrenn: Are you asking me, Mr. Bennett, for an adjournment of this hearing until such time as the arbitration proceedings are settled and that the pilots will want to submit that as part of the record?

Mr. Bennett: It had not been my intention, Mr. Wrenn, to ask for an adjournment of the hearing. As I look at the arbitration, it is not a part of this case. It is a disagreement between the groups of pilots which is not a part of this case at all.

Examiner Wrenn: I want to be clear that I understand what [2402] you were doing, whether you were asking for an adjournment of the hearing or whether you were just asking for permission to file a statement as to what they agreed.

Mr. Bennett: That has been my intention and it still is my intention. I hadn't planned to ask for an adjournment in order to make that a part of the record. The CAB and Western Air Lines and United would not be bound by it. It would be our recommendation only. I wish enough time to elapse before the Examiner makes any decision in this case in order to get that recommendation.

On the other hand if the Examiner would not permit the record to remain open to hear witnesses on the question of what has gone before or what has happened before to pilots who are parties to mergers, in the alternative, I certainly would want the——

Examiner Wrenn: Let us clear up one thing. I want to go back to the last thing I said on the record to you about Mr. Oakman. Mr. Oakman can testify about anything that he knows of his own knowledge. You can call Mr. Behncke and let him testify. You can call anybody in your organization to testify about it. The only question I have is the question on those particular affidavits.

Mr. Bennett: I understand.

Examiner Wrenn: You do not understand there is any effort on the part of these other parties here to consent or to exclude any proper testimony on that from the record or to consent that it isn't

proper for the Air Line Pilots Association to make the contention that past history establishes that policy. If there is any such intention, I want the record to [2403] be clear that I am not endorsing any such idea.

Mr. Bennett: We are not prepared at this time. We have no witnesses at this time who can speak from their own knowledge as being parties. That is the point that I make. We are asking for time to bring those witnesses before this Examiner to make that point clear in the record. We want time to bring them in.

Mr. Reilly: If I may say, Mr. Oakman has testified that the pilots have gone with the route. If he testified for three days, I don't think he could say more than that.

All through your statement, Mr. Bennett, you speak about the number of pilots and identity of pilots who have been transferred from Western to United. I believe yesterday Mr. Kennedy asked if you would submit for the record the question which is to be submitted to the Board of Arbitration. Are you prepared to submit that question today?

Mr. Bennett: I might say that there is an arbitration agreement which does seek to establish as a question in the arbitration the number and the identity of the pilots and also how they shall be integrated, what their seniority shall be in the event that the Board would require their being taken.

Examiner Wrenn: Do you plan to submit copies

of that arbitration agreement to parties? Are you going to submit it for the record?

Mr. Bennett: It has not been my intention to do so.

Mr. Reilly: I am interested to know if the question submitted to arbitration presumes conclusively that United must absorb certain Western pilots. I think it is very [2404] important for this record that the question be submitted to a mediation or to the Arbitration Board and be made a part of this record.

Mr. Bennett: My answer to that is that I do not think that the differences between the pilot groups have any place in this record. As I understand it, the issue in this case to which we are all addressing ourselves is set out very specifically in the order of this Board. That issue is: Were any of the pilots of Western adversely affected by reason of the sale of Route 68 and what, if anything, should be done about it?

If there is a difference between the Western pilots and the United pilots as to who was affected and they desire to settle that between themselves and to make a recommendation to the Board, I don't understand that that is a part of this case.

Examiner Wrenn: We are not putting that in the case. It is a little different situation, isn't it, that is, the question that was addressed to the arbitration panel is a little different? We don't want controversy in here, and we are not going to try it in here. I understand it is just a simple statement of what question was addressed to you. You pro-

posed to submit the recommendation of the panel. As I further understand you, you have agreed to be bound and accept whatever recommendation the arbitration panel makes.

Mr. Bennett: That is correct. The United pilots and Western pilots are bound by the recommendations, if any, that come out of that arbitration. That is correct.

Examiner Wrenn: Where do we get in trouble with the question [2405] that is posed to the panel?

Mr. Bennett: I am not quite clear. You mean, where do we get in trouble by submitting a copy of our arbitration agreement to this Board?

Examiner Wrenn: Just the question; I am not concerned about the arbitration agreement. I am just asking about the question. You are going to give us the decision?

Mr. Bennett: Yes.

Examiner Wrenn: They want to know the question you are posing to be decided.

Mr. Bennett: I don't think it is a part of this case. I don't think it has a proper place in this case and it had not been our intention to submit it.

Mr. Reilly: Then we object to the Board receiving the decision or in any way considering it. It took me a long time to get Captain Stephenson to agree there was any disagreement. It has been two years and six months since this transaction got together. United pilots filed an intervention. It indicates there is a disagreement. They want to be here to protect their interest. There had been a disagreement or they misled the Board. Otherwise,

there was no point in their being here because Mr. Bennett could represent them.

Mr. Kennedy: I think you should require counsel for ALPA to submit both the award and the arbitration agreement at the time it is made. I don't think you can take the award in vacua. You must have the arbitration.

Examiner Wrenn: It is my personal feeling that the question was posed to them is appropriate. In the first place, I thought that I can personally require them to either submit [2406] that or the agreement. That is up to them.

Mr. Renda: I don't agree with Mr. Kennedy and we are going to oppose very strongly keeping this record open if for only one day to receive any arbitration award that the ALPA might obtain. The reason is very obvious. If there is anything that would be prejudicial to the rights of Western Air Lines, it would be that very thing. The Board is to determine whether any employees, and "employees" is not limited to pilots—ground personnel, people who are represented by the Brotherhood and CIO, have been adversely affected. I can very simply see, and it is clear to me—if I am being over-suspicious you can hold me to it—that in a situation like this where the counsel of Western pilots got together with United pilots, both of whom answer to ALPA, there can be only one conclusion, i.e., that "X" pilots were adversely affected. That is going to be the first finding. That is the most prejudicial thing that is going to happen in this proceeding.

This case was reopened as I said before for the Examiner and the Board to decide first, was anybody adversely affected. There is no doubt in my mind that the procedure which the ALPA established by trying to keep the record open—the only conclusion that can be arrived at is that certain pilots were adversely affected. That usurps the real purpose of this proceeding.

Examiner Wrenn: What is the difference between their contention?

Mr. Reilly: It is not relevant, but I don't agree with them.

Mr. Kennedy: I think both the award and the agreement [2407] and certainly the question should be made as a part of the record.

Mr. Bennett: At the time the award is made?

Mr. Kennedy: Yes.

Examiner Wrenn: I don't know. There are a lot of it's.

Mr. Reilly: Will management be able to be heard there?

Mr. Bennett: Yes.

Mr. Kennedy: What the arbitrator finds has no binding effect on the Examiner. You can examine that de novo.

Mr. Bennett: It will merely be the recommendation as to the number, the identity and the——

Examiner Wrenn: My own personal feeling is that I don't think I have the power to do that. If you submit that, you should at the same time submit to the Board the question that was posed to the panel to decide.

That is my own personal feeling.

Mr. Kennedy: The award would probably be a written award which would commence with the statement of the question.

Examiner Wrenn: Maybe it would and maybe it wouldn't. Maybe it would or maybe it wouldn't. As I understand Mr. Bennett, he has made a statement of their present intentions.

Mr. Bennett: I think I stated that there was an agreement; that the machinery to arbitrate was in the process; that the arbitration is set to be heard on the 28th day of November, and that the agreement provides that the arbitration shall be completed by the 8th of December.

Mr. Renda: I fully appreciate even if that were received into evidence as part of this record, that the Examiner or the Board wouldn't be bound by it. I appreciate that, Mr. [2408] Kennedy. Let us be realistic about that situation now. I can't see where any other course of action would be followed in the event the ALPA comes in with an arbitration award showing that 15 pilots were adversely affected than to also say "W" ground employees were adversely affected. Maybe theoretically we might argue different, but let us look at it realistically.

It will be prejudicial. Either the Examiner and/or the Board is going to decide whether they were adversely affected or they are going to rely upon a recommendation of one of the interested parties in this proceeding through a procedure of arbitration; I know at this time what the conclusion is going to be before they even start.

Examiner Wrenn: Very well.

Mr. Bennett: I am not as clear upon the conclusion of the arbitration as Mr. Renda is. As a matter of fact, I doubt very seriously if the arbitration will turn out as Mr. Renda indicates.

Mr. Renda: Will you answer one question?

Mr. Bennett: At the time we make our recommendation, we will also include the questions that were posed to the arbitrator. I don't see any objection to that.

Mr. Renda: Unless I have misunderstood, misinterpreted or wasn't listening, all your limitations have been limited to this: that the arbitration panel is going to decide the number and the identity. In my way of thinking that only poses one conclusion that you have already agreed that certain pilots were adversely affected and all you have got to decide is how many and who. [2409]

Mr. Reilly: I agree with Mr. Renda. That is the reason I asked the question about the question. We reserve the right, if it is going to be received or considered by the Board, to have the opportunity to have a hearing to reopen the matter to question the people who arrived at that or have the record of that arbitration proceeding be made available to United. That is not a request.

Examiner Wrenn: Back to Mr. Renda's question, was that a correct statement?

Mr. Bennett: That it has already been decided that certain pilots are affected?

Mr. Renda: Let us make it a simple question.

Mr. Bennett: Let me answer, if I may.

Mr. Renda: I thought you asked me a question.

Mr. Benentt: I think the record is clear as it now stands that so far as the Western pilots are concerned. They feel that every single pilot who was flying Route 68 should go with the route to United.

Mr. Renda: That doesn't answer the question of adverse effect.

Mr. Bennett: Because they were adversely affected, they should still go with the route.

Mr. Renda: That is your side of the case.

Mr. Bennett: The record substantiates that is their position. A number of years passed. In consequence of the passage of time, the United pilots are not of that opinion because there have been intervening rights. In order to alleviate, if you please, some disruption or some difficulty which might arise between United and Western Air Lines or among [2410] the United pilots which in the event that the Board would in fact require all the pilots who were flying Route 68 to go with the line, the pilots have consented to this arbitration, and I think it is highly significant that they have.

It is helpful both to United, Western and the CAB. I think it would be something that the Board should, could and would appropriately consider.

Examiner Wrenn: You are getting back to argument about that. I think I have heard enough argument on the subject.

Mr. Reilly: I have some more statements on the exhibits.

During the time of the pre-hearing conference, there were many proposed exhibits submitted by ALPA including the exhibits transmitted to you by letter dated November 14th and signed by Mr. Bennett. Attached to that letter are copies of various affidavits. I move that those exhibits, those proposed exhibits as well as any other exhibits which have been transmitted to you of which I may or may not have received copies and which have not been identified be stricken from the record in this proceeding.

Examiner Wrenn: I don't think I quite follow there, Mr. Reilly. Certainly the only documents that are going into this record are the ones which have been marked for identification here on this record and testified to either by Captain Stephenson or Mr. Unterberger or Mr. Oakman. There was some question asked about those affidavits, but those affidavits have never been identified on this record or marked as any part of them.

Mr. Bennett: That is correct.

Mr. Reilly: Have these been made part of the docket? [2411] They rest in your file.

Examiner Wrenn: No. They are in my personal files. As I understand the situation, the exhibits which have been marked for identification and which were submitted to me on or about May 23rd, at least that is the date of Mr. Behncke's letter, supplanted anything that had gone previously, and that is all that had been offered.

Mr. Reilly: Mr. Bennett was to advise us

whether or not there was available transcript of the proceedings of the Executive Board of the ALPA of May, 1947, and November, 1947, and if available, whether or not he would furnish them for this record?

Examiner Wrenn: Have you had an opportunity to look into that?

Mr. Benentt: They are not available and I am not prepared to furnish them.

Mr. Reilly: The record shows they are not available.

Mr. Kennedy: What do you mean?

Mr. Bennett: We don't have them with us. I don't know if there are such minutes, but if they are, we would not furnish.

Mr. Kennedy: Your position is even if this existed, you would not furnish them?

Mr. Bennett: We would not make them a part of the record. We see no purpose to be served in this proceeding.

Mr. Reilly: You know, Mr. Bennett, don't you, as a result of the participation of the ALPA in this proceeding, copies of all exhibits have been sent to you, and Western and United furnished all the meetings of the Board of Directors at request of Public [2412] Counsel for this record?

Mr. Bennett: No, sir, I don't.

Mr. Reilly: You haven't read the record?

Mr. Bennett: No.

Mr. Kennedy: It depends on whether you believe they are relevant. If it is your ruling they are relevant, you can't have that kind of attitude

taken from any parties. We wouldn't take it from an air line. We wouldn't take it from anybody else. I ask you to rule if they are relevant to make them available.

Examiner Wrenn: I shall not. If parties want to file a subpoena, I will take the proper action on the subpoena. Apparently that is the only way you would get them.

Mr. Bennett: If they exist; I don't know that the minutes exist.

Mr. Kennedy: I think it is a bad attitude for any party that they won't make material available unless a subpoena is asked for it. I don't see how the Board can properly function in those circumstances.

Examiner Wrenn: I will agree with you to this extent, Mr. Kennedy; from what I have heard here, they appear to be relevant. My statement comes down to requiring them to furnish it. I have honest doubts in my mind, if I said "you bring them in here" and if resisted, it would come through. That is why I say I think if some party wants to subpoena them, that is the proper method.

Mr. Kennedy: Although I think they are relevant, I don't think they are important enough to ask for a subpoena for them. It seems to me as the Examiner well knows, we have, [2413] for instance, recently gone through a case quite important where we issued inspection orders and subpoenas and we subpoenaed witnesses and documents from air lines and I think quite properly. It seems to me that there shouldn't be any exceptions

in a Board proceeding to that situation. If documents are relevant and the Examiner asks for them, they ought to be produced. That is a subject upon which as Public Counsel and generally I feel quite strongly.

Examiner Wrenn: I understand. I appreciate your feelings.

Did you say first you don't know if there are any, and secondly, you won't furnish them if there are any?

Mr. Bennett: I am not prepared to furnish them.

Examiner Wrenn: Coming to the exhibits, on Exhibits 1 through 17-A, I am going to receive them in evidence over the objection made, but I want this one condition in here. With respect to the objection made by Mr. Renda, and I am making the ruling in light of the questions I asked this morning about the 1949 data, I am going to allow him, because the exhibits were not furnished earlier when there appears to be no reason they couldn't have been made available a week or two ago at least, 15 days, time after the adjournment of this hearing to point out any errors, mathematically in them or to file any factual statement or what Western considers incorrect conclusions, not argument.

If in studying them, Western sees or believes that they demonstrate different facts, you may file such a document.

Mr. Renda: Do I understand the Examiner's ruling to be that if that document is filed it will

be received in [2414] evidence and be a part of the file of this case?

Examiner Wrenn: Yes, sir. I am affording you that rather than adjourning the hearing at this time until such time as you might feel that you would go on with cross-examination.

Mr. Reilly: I believe inadvertently you talked about Exhibit 17-A. I think we did away with 17-A and designated old Exhibit 17-A as No. 19.

Examiner Wrenn: I believe you are right.

There is no objection to Exhibit 18, therefore it is received in evidence.

With respect to Exhibits 19 and 20 for identification, the ruling was made yesterday on a motion to strike which was sustained. That ruling stands. There is one point about this situation that does trouble me, and it is not necessarily related to this particular instance. It is a situation that I can foresee that might occur in another case. That is this: Where a witness prepares a study, gathers in material and prepares a study, and through death or other circumstance, that witness isn't able to appear, there is a question in my mind about applicant being deprived of the right to make such information available.

That troubles me. I can foresee where some situation like that may occur some time. Yet, under the circumstances involved in this particular case here, I don't see that I have any alternative other than to sustain the objection to the exhibits because of the hearsay character of them. Again I want to say that they will be permitted to accompany the record as an offer of proof.

You have your right to ask the Board to overrule me, Mr. [2415] Bennett. It may do it. I permitted any question to be in there on it in the event they overrule me. I want to make clear on the record again on this point as I think I said a while ago that the ruling goes only to the objection as to the hearsay character and not to the merits of your contention.

Mr. Bennett: I understand you.

Examiner Wrenn: You are free to argue that. If Mr. Oakman testified to anything as of his personal knowledge, or Mr. Behncke can testify as to his personal knowledge as to what happened on that, I consider that perfectly proper testimony. I want you to understand, and I want the record to be clear that the sustaining of the objection to the exhibits does not go to the merits of your contention. It is not a ruling that that is an improper argument for you to make.

Are there any questions?

Mr. Renda: Was there going to be a ruling with respect to Mr. Bennett's motion that the record be held open or shall we defer that?

Examiner Wrenn: I think that is going to have to be deferred. It seems to me the more appropriate procedure would be if the agreement is consummated and if the arbitration panel does come up and set something forth, it would be more appropriate for the Air Line Pilots Association to request that it be reopened for the purpose of receiving it since

apparently there isn't any agreement here that it be reopened.

Mr. Reilly: We would prefer, from United's standpoint, that Mr. Bennett be asked that it be opened rather than leave the record open. [2416]

Mr. Renda: Western agrees with that.

Mr. Bennett: It seems to me in view of the fact that there is an agreement that they are in the process of arbitration, that is, setting up the machinery to arbitrate the matter; it is a foregone conclusion we are going to get an answer. I would prefer that the record remain open to receive it, at least the arbitration award. It will, as we have already indicated, only be a recommendation. It will not be binding.

Examiner Wrenn: I understand that. There isn't anything binding on the Board or any of the parties. You are simply going to point out what you have agreed to as a result of arbitration and what would be the position of the pilots.

Mr. Bennett: Instead of insisting at this time that every pilot on 68 who was on 68 be taken with a line, and if the Board should go along with my thinking and thereby cause a great deal of trouble on United, this arbitration is being held and I think it will completely settle the differences if any exist, upon all the questions that are pertinent. I think it is something that would be helpful to the Board and to both carriers.

Examiner Wrenn: I don't have any question on that at all. My only point is that it probably relates to better procedure from a procedural stand-

point. I am not ruling finally on the matter. I want to think a little on the matter. I have just indicated at this time what might be the better procedure.

Mr. Bennett: There is one other question I would like to clean up. [2417]

Examiner Wrenn: Proceed.

Mr. Bennett: As to the permission given to Western Air Lines to file some document or file comments regarding factual mistakes or errors that may be in the Exhibit 19 or the Exhibits 2 through 17, I wish to say this: that should be confined, I take, to only that data about 1949.

Examiner Wrenn: I want the record to show that relates to 1949 data only. I want it to be a brief. That is purely factual.

(The documents heretofore marked Exhibits ALPA 1 through 18, inclusive, for identification, were received in evidence.)

(Discussion off the record.)

Mr. Reilly: I wish to state the appearance of Charles F. McErlean, Law Director, United Air Lines.

Examiner Wrenn: Mr. Crawford, you may call your next witness forward with your case.

Mr. Crawford: I would like to make a brief opening statement.

This will save time if I point out what our exhibits are and what the nature of our testimony is.

We have filed for identification Exhibit A, Exhibit B and a supplement to Exhibit B.

When I filed, I neglected to designate them by

number or letter because I didn't know what the policy or procedure would be here, whether they would be marked numerically according to the others or not, so I later wrote a letter to you and said if agreeable, they should be marked Brotherhood of Railway and Steamship Clerks Exhibits A, B and Supplemental B. [2418]

Mr. Renda: There are just three?

Mr. Crawford: Yes.

Examiner Wrenn: They may be so marked.

(The documents referred to were marked Exhibits BRSC-A, B and Supplemental B for identification.)

Mr. Crawford: Continuing my statement, these exhibits, particularly B and Supplement to B, were prepared in accordance with our understanding of the issue to be considered at this hearing, namely, one, whether any employees of Western Air Lines have been adversely affected as a consequence of the transfer of Route 68, and No. 2, what conditions, if any, should be imposed.

Our Exhibit A is a copy of the proposed Burlington formula.

As to Exhibit B and the Supplement thereto, we have limited it only to the question of showing who we allege have been adversely affected. We made it as brief as possible so that it could be readily checked by Western.

I want it understood we have not attempted to raise any monetary claim by the reason of this exhibit. We show the nature of what we believe to

be the adverse effect. We left the question of the precise extent or degree that might flow from that particular adverse effect as a matter to be taken up with the carrier, if and when a condition is imposed. That was made up in the outline of procedure at our pre-hearing conference.

I would just like to point it out so we can have an understanding as to the limitation.

It says: "It was agreed that the term 'any' employees [2419] as referred to in the Board's order does not mean a specific number. The opinion was expressed that a showing of adverse effect to one employee would meet the provision of the Board's order. Public Counsel pointed out the possibility that if only one person were affected the Board might consider *de minimis* and that no Board action would be required."

It was also pointed out there, and I think I understand, that we do propose to show that employees have suffered consequences but do not propose to go into the question of the names of individual employees and the measures of individual adverse consequences and settlement of individual problems. Those problems will be taken up later if and when a formula is to be provided.

It would be only fair at this time to raise that point with the carrier in order to let them have an opportunity in this conference or bargaining, as we call it, to express himself if a condition is imposed.

I want it understood that these exhibits are limited to showing what we believe the issue of

whether these certain employees have been adversely affected to be. It is nothing more.

Mr. Renda: I would like the record to clearly show that here has been no agreement reached or entered into between the carrier and the BRC with respect to whether any employees were adversely affected or as to what should be done should the Board so find.

Whereupon

LYLE McKINNEY

was called as a witness on behalf of the Brotherhood of Railway [2420] Steamship Clerks, and having been first duly sworn, was examined and testified as follows:

Examiner Wrenn: Give your name and address to the Reporter.

The Witness: Lyle McKinney. My office address is 7688 Pacific Electric Building, Los Angeles, California.

Direct Examination

By Mr. Crawford:

Q. What position do you hold with the Brotherhood of Railway Clerks?

A. I am a Grand Lodge representative.

Q. What offices have you held in the past, before the office you now hold?

A. Formerly, I was an organizer in the field for a number of years. I was then during the war years our national legislative representative here in the City of Washington handling our cases before

(Testimony of Lyle McKinney.)

the National Mediation Board, the War Labor Board and the Railway Labor Panel.

Following that, I was in our Cincinnati headquarters as Chief Clerk to Grand President Harrison, and then I returned to the field in the organization and negotiation of contracts in the western part of the U. S.

Q. Were you, during that period of time, the acting General Chairman and later the General Chairman for the Brotherhood on the property of Western Air Lines, Inc.? A. That is correct.

Q. Were you holding that office at the time you conducted your investigation and negotiations on that property? A. That is correct. [2421]

Q. I would show you, at this time, Brotherhood's Exhibits A, B and the Supplement to B. The Examiner has the original. I will ask you to examine those and ask you if you sponsor those exhibits on behalf of the Brotherhood? A. Yes, I do.

Q. Were they prepared under your supervision and direction? A. That is correct.

Q. Did you personally participate in the investigation and the preparation of the material that represents the contents of those exhibits?

A. I did.

Q. Would you state what they represent, particularly B and the Supplement to B? We think we know what A is.

A. The original B we obtained in November, 1947. The Supplement was acquired approximately a year later in order to comply with the request

(Testimony of Lyle McKinney.)

of Public Counsel for additional information regarding the present employment of the individuals whom we have named.

Q. After you prepared your material which went into that exhibit, did you have an opportunity to check your exhibits with Mr. Renda or any representative of Western Air Lines?

A. Yes, Mr. Renda and I had conferences over these individuals named here. The information contained was approximately correct.

Q. What I mean is: You gave Mr. Renda or someone at Western an opportunity to check the information you had with their records?

A. Yes, Mr. Renda was checking it. [2422]

Q. You say as the result of that conference for checking purposes, you found the record substantially correct at that time? A. That is right.

Q. What is the source of the information which you based the contents of those exhibits on?

A. Personal interviews—by correspondence and then later by personal interviews with the individuals.

Q. Will you explain how each employee is shown to be adversely affected? Take on Exhibit B the third item and explain it.

A. Some were furloughed when their position was abolished. Others had services terminated. Others were transferred through exercise of seniority or transferred to other locations.

Q. Directing your attention to the bottom, starting with Mr. Jacobs—those do not represent fur-

(Testimony of Lyle McKinney.)

loughs, but transfers from San Francisco to the city designated, and moving expenses and so forth, is that correct? A. That is correct.

Q. The third item sets out the nature of the alleged adverse effect? A. That is correct.

Q. You do not purport to set forth all of the employees that may have been adversely affected. This is a representative group, is that correct?

A. That is correct.

Q. I want to call your attention to the fact that I believe that just recently in conference with me you called [2423] attention to what was evidently an oversight in the checking back with Mr. Renda. There was apparently a conflict in the record, I believe it shows, to the disadvantage of Western Air with reference to Mr. Toomer.

Directing your attention to the Supplement to Brotherhood "B" what I had in mind, Mr. McKinney, is to have you explain it. We show the record service of Mr. Toomer of December 1, 1945, and apparently he was furloughed from September 18th and then rehired on the 25th. I think you called my attention to your notes. You referred to the material covering Mr. Toomer. A letter was directed to him notifying him of his furlough. That stated the date to be September 14th. In other words, Mr. Toomer was on the pay roll four days longer than that?

A. That is correct. The letter which Mr. Toomer received from the company advised that owing to the disposition of Route 68, he would be

(Testimony of Lyle McKinney.)

furloughed effective as of September 14, 1947. However, Mr. Toomer advised me that he remained in the service until September 8th. He worked four additional days after the September 14th date.

Q. While we are speaking of Mr. Toomer, probably one item can explain another. I call your attention to "Compensation Prior to Transfer, Termination or Furlough." It shows Mr. Toomer at \$1.12 an hour. It shows he was rehired on September 25th, and it shows his present compensation is \$1.12 an hour. It shows he didn't suffer a loss of salary. What is the adverse effect?

A. Mr. Toomer actually lost a week's pay. He was off the pay roll from September 18th through September 25th. He [2424] returned to service on September 25th.

Mr. Crawford: The letter that we spoke about shows September 14th and it should be September 18th.

Q. (By Mr. Crawford): That also applies, Mr. McKinney, to Mr. Jacobs and others where the salary shows before and after. I refer to those employees below Toomer. They were transferred from San Francisco to Denver. Their loss was not a change in the salary. They lost the time going from one city to another, is that right?

A. That is right.

Q. There was one other question which Mr. Reilly of United asked me, and I would like to have you state it. It is not the position of the Brotherhood in this particular case to urge that United take

(Testimony of Lyle McKinney.)

over any employees of Western, is that correct?

A. That is correct.

Q. To the best of your knowledge, the statements contained in Exhibits A and B, and Supplement to B are true and correct to the best of your knowledge?

A. That is right.

Mr. Crawford: I would like to offer in evidence Brotherhood's Exhibits A, B and Supplement to B.

Examiner Wrenn: I will defer a ruling until cross-examination has been concluded.

Off the record.

(Discussion off the record.)

Examiner Wrenn: Let us recess until 2 o'clock.

(Whereupon, at 12:40 p.m., the hearing adjourned to reconvene at 2 p.m. the same [2425] day.)

Afternoon Session—2:00 P.M.

Whereupon,

LYLE McKINNEY

was recalled as a witness on behalf of the Brotherhood of Railway Steamship Clerks, and, having been previously sworn, was examined further and testified as follows:

Examiner Wrenn: Mr. Bennett, have you some questions?

Mr. Bennett: I have no questions.

Examiner Wrenn: Mr. Renda, you may examine.

(Testimony of Lyle McKinney.)

Cross-Examination

By Mr. Renda:

Q. Mr. McKinney, on what date was the Brotherhood of Clerks—and Mr. Examiner, I presume it is alright to refer to this organization as the BRC or Brotherhood?

Examiner Wrenn: That is alright.

Q. (By Mr. Renda): On what date was the BRC certified as the bargaining agent for the class and craft that you represent in this proceeding?

A. The certification was issued by the National Mediation Board on September 9, 1947.

Q. What, in your opinion, constitutes adverse effect to an employee?

A. Well, he may be adversely affected in several ways. He may be terminated, furloughed, transferred to a less lucrative position as a result of a senior employee displacing him.

Q. Generally, would you say it is something that can be measured in dollars and cents? [2426]

A. I think so, generally.

Q. Aside from what we all recognize is the inconvenience that may result in transferring one employee from one domicile to another?

A. Yes. That is right.

Q. On direct, this morning, in reply to a question by your counsel, you stated that you had conferred with me with respect to your exhibits in this case and that I had agreed that the record was substantially correct.

A. No, I didn't say that.

(Testimony of Lyle McKinney.)

Mr. Crawford: I want to correct that. I didn't want him to state that. I think he said it was his understanding that the records were substantially correct in their checking. I don't think he said you agreed to that. I don't want to infer that.

Mr. Renda: Just so we have it straight for the record.

Q. (By Mr. Renda): I understand your testimony was that you understood that the data set forth in your Exhibits B and Supplemental B, were substantially correct? A. That is correct.

Q. Are there any other employees that you know of that are represented by the BRC which were adversely affected, allegedly, by reason of the sale of Route 68, other than the employees mentioned in Exhibits B and Supplemental B of the BRC?

A. I know of one other right offhand.

Q. What is his or her name?

A. His name is Kenneth Cassidy.

Q. How was he allegedly adversely [2427] affected?

A. Similar to Mr. Toomer. He received the letter from Mr. Eastman stating that due to the disposal of Route 68, it wouldn't be necessary to have the highly departmentalized departments over there and he would be furloughed effective September 14th.

Q. Do you know what happened to Mr. Cassidy?

A. Yes, sir.

Q. Will you please tell us?

A. Mr. Cassidy requested the right to exercise

(Testimony of Lyle McKinney.)

his seniority to another station. He was offered that opportunity on September 23rd. That same day, by virtue of the other men having transferred out of Denver, Mr. Cassidy was permitted to resume service in Denver.

Q. So that he was re-employed by Western and is still in the employ of Western Air Lines, is that correct?

A. Well, partially. He was re-employed, but he has since terminated.

Q. He has since terminated? A. Yes.

Q. Do you recall when that was?

A. April 15th.

Q. Of this year? A. Of this year.

Q. So that aside from the names which are listed in your Exhibits B and Supplemental B and Mr. Cassidy, that represents all of the people that you know were allegedly adversely affected?

A. Up to this time.

Q. Refer to Exhibit B and Supplemental B. I have several [2428] questions to ask you with respect to each employee that you have listed.

First, I refer to Miss Bower. She was terminated on what date? A. August 16, 1947.

Q. That was prior to the transfer of Route 68?

A. That is correct.

Q. Mr. Callahan was terminated on what date?

A. August 20, 1947.

Q. That also was prior to the sale of Route 68?

A. That is correct.

Q. Mr. Chelf, you show as "Services terminated." Do you know what happened to him?

(Testimony of Lyle McKinney.)

A. Yes, I do.

Q. He was transferred to Las Vegas, was he not?

A. That is correct.

Q. Do you know on what date he was transferred?

A. No, I couldn't tell you the date he was actually transferred over to Las Vegas.

Q. Our records indicate, Mr. McKinney, he was transferred to Las Vegas on September 24th, and there was no time lost. Do you have any dispute with that information?

A. No, I don't.

Q. The next person is Mr. A. R. Elliott. You indicate his position was abolished. Do you know on what date he was terminated?

A. September 2, 1947.

Q. Do you know that subsequent to September 2nd, and in the same month, he was offered a position with Western [2429] Air Lines and rejected it and went to work for Monarch Airlines?

A. No, I don't know that.

Q. Next, let us consider Mr. James Glaze. He was terminated as of what date?

A. September 19, 1947.

Q. When I say "terminated" I mean furloughed. We are in agreement on that, are we not?

A. That is right.

Q. As such, he would have a right to exercise seniority rights?

A. That is right.

Q. Where I use "terminated," it is synonymous with furloughed.

A. That is right.

Q. Do you know what happened to Mr. Glaze?

A. Yes, Mr. Glaze was offered a transfer to

(Testimony of Lyle McKinney.)

another station and he declined the transfer.

Q. That is right. He was offered a job at San Francisco, Western Air Lines? A. Yes.

Q. He declined the transfer? A. Yes.

Q. He is now in the employ of United Air Lines.

A. I don't know.

Q. He was offered a job in San Francisco by Western and rejected it? A. That is right.

Q. Look at Miss Lisco, and tell what date she was given [2430] notice of furlough.

A. She was also furloughed August 16, 1947.

Q. There, again, that was before the sale of Route 68. Let us consider McAndrews. He was furloughed as of what time?

A. September 14, 1947.

Q. Do you know that Western offered McAndrews a job at San Francisco and was rejected?

A. No, I did not.

Mr. Crawford: As of what date was he offered that?

Mr. Renda: September 23rd.

I might indicate on these where there seems to be a conflict, I propose to introduce evidence on my direct case.

Examiner Wrenn: I assumed you were going to take care of that.

Mr. Crawford: On what date was Mr. McAndrews offered the transfer?

Mr. Renda: 23rd of September.

Q. (By Mr. Renda): You show Rohan with the remark "Probably reduced." Isn't it a fact he

(Testimony of Lyle McKinney.)

wasn't furloughed, so his name should be deleted?

A. Yes, his name should be deleted.

Q. The next gentleman is Sevik. When was he furloughed?

A. September 14, 1947.

Q. Wasn't he offered a job by Western in San Francisco and he rejected it?

A. That is correct.

Q. The next is Miss Tomlin, when was she furloughed? [2431]

A. August 15, 1947.

Q. That was before the sale of Route 68?

A. Yes.

Q. The next is Toomer. You testified this morning that he was re-employed by Western. I don't recall the date that you gave.

A. He was supposed to have been furloughed as of the 14th, but he worked four additional days and he was offered a transfer to another station on the 23rd of September, and at that same time the Denver positions were available, so he was re-employed in Denver.

Q. If you know, isn't it a fact he was offered re-employment prior to the 23rd and the station was Casper, Wyoming, and he chose to wait to see if an opening would develop in Denver?

A. It was Casper, but it wasn't offered him until September 23rd.

Q. That is correct.

A. After he had been out of service since the 18th.

Q. But he didn't resume his employment until the 25th?

A. Yes.

(Testimony of Lyle McKinney.)

Q. But he could have resumed employment at Casper on the 23rd? A. That is right.

Q. We are in agreement.

Next, let us consider Mr. Young. On what date was he furloughed? A. September 14, 1947.

Q. And do you know that he was offered a job by Western [2432] at both Los Angeles and Denver and rejected both?

A. Well, that is not exactly correct. He ultimately accepted a position in San Francisco and worked there over a year. He went out there in the latter part of the month of September, as I recall. Pardon me, it was after that.

Q. But prior to the time he accepted employment at San Francisco and subsequent to his having been furloughed, he was offered and rejected employment at Los Angeles and Denver.

A. That is correct.

Q. The next Elliott is the same as we have considered before? A. Yes.

Q. He appears twice? A. Yes.

Mr. Crawford: We listed those as showing those that had gone to another employer.

The Witness: I would like to say this in connection with Mr. Elliott, that Mr. Elliott personally told me that he had made a request for transfer to some other station and he never heard anything from it and it was necessary that he take a position with Monarch Airlines in order to get back to work.

Q. (By Mr. Renda): Do you happen to have

(Testimony of Lyle McKinney.)

any written evidence of any letter he wrote Western to which he did not receive a reply to, Mr. McKinney? A. I think I have it with me.

(Discussion off the record.)

The Witness: Here is the original. [2433]

Q. (By Mr. Renda): Mr. McKinney, you have shown me a letter addressed to "To whom it may concern," signed by Mr. Elliott in response to my previous question. My question was whether or not you have in your possession, you may or may not, a copy of any letter written by Mr. Elliott to Western Air Lines or any official of Western Air Lines with respect to his desire to transfer to another station.

The reason I ask is that our records indicate that no such letter was ever received. There was no desire on the part of this employee to transfer elsewhere. A. Here.

Q. It is your testimony, then, that Mr. Elliott did write to Western Air Lines and asked to be transferred elsewhere as evidenced by a letter in your possession? A. That is right.

Mr. Renda: Off the record.

Examiner Wrenn: Off the record.

(Discussion off the record.)

Examiner Wrenn: On the record.

Proceed, Mr. Renda.

Q. (By Mr. Renda): Let us proceed to the next person, Mr. Jacobs. Our records indicate, Mr.

(Testimony of Lyle McKinney.)

McKinney, that Mr. Jacobs was transferred to San Francisco and that there was no time lost.

A. There was no salary lost, but Mr. Jacobs paid his own fare from Denver to Salt Lake City and Western Air Lines furnished him transportation from Salt Lake City to San Francisco. He paid for the moving of his furniture from [2434] Denver to San Francisco.

Q. Do you know if Mr. Jacobs has, at any time, submitted any claim to Western Air Lines to be reimbursed for his transportation from Salt Lake City to Denver and for the cost of moving his household effects? A. No, I don't.

Q. Have you any idea as to what that claim might amount to in dollars?

A. Yes, for my own information, in contacting Mr. Jacobs, I had him give me an affidavit as to what expenses he had been put to. I hadn't intended to use this in any hearing back here. It was for my own information in contacting the employees that I got the information. It was my intention to use that back on the property.

Examiner Wrenn: Why don't you give him the amount?

Q. (By Mr. Renda): Give the amount.

A. He had \$154.50 moving expenses on his household goods between Denver and San Francisco and he didn't state the amount of the fare that he paid for his trip from Denver to Salt Lake City.

Q. Mr. McKinney, you are familiar, I presume,

(Testimony of Lyle McKinney.)

with Western Air Lines' policy with respect to paying for moving expenses and transportation cost of employees that are involuntarily transferred from one station to another?

A. I am familiar with that which is contained in the current labor agreement.

Q. Isn't it a fact that with respect to Mr. Jacobs and a few others that I will query you on, that I personally, and [2435] perhaps others of the company have said to you in the past, that if you will submit a claim on behalf of these men who have not been reimbursed totally for moving expenses that I am fairly certain that management will honor them?

A. You made that statement to me very recently, just before we came back here for this hearing.

Q. Let us look at Mr. Moore. I presume the same situation holds with Mr. Moore as with Mr. Jacobs. He was transferred to San Francisco and there was no time lost.

A. Mr. Moore was furnished transportation from Denver to San Francisco, but he lost salary from September 14th to October 1st, the date he resumed service in San Francisco.

Q. Our records indicate that the date of his transfer was September 27, 1947, and that there was no time lost in actually being off the pay roll.

A. He was furloughed as of September 14th.

Q. Where was he employed at the time he was furloughed?

A. Denver.

(Testimony of Lyle McKinney.)

Q. According to your information, when was he recalled to duty?

A. October 1st, in San Francisco. I will clarify it to this extent: Mr. Moore told me that when he was notified of the availability of a position in San Francisco for him, he then asked to have three days in which to get his business cleared up in Denver so that he could move.

Q. Are you familiar with the letter that Mr. Moore wrote to Mr. Frank Eastman, Western Airlines, dated September 23rd, which I will introduce as part of my direct case, which indicates that on that date he had received a telephone [2436] call and had accepted the offer to transfer to San Francisco and he requested time in order to clear up his own personal business before making the transfer?

A. That is correct.

Q. Let us consider Mr. Pope. Did he lose any time in transferring from his former station to San Francisco?

A. Mr. Pope drove his own car out there. He moved by his own personal automobile and he was not reimbursed for traveling expenses.

Q. He lost no time? A. He lost no time.

Q. If Mr. Pope will present his claim, the company, pursuant to its policy, will pay that claim.

Examiner Wrenn: Was that a statement or a question?

The Witness: I thought you were making a statement.

Q. (By Mr. Renda): I represented that I would pay it?

(Testimony of Lyle McKinney.)

A. You represented you would pay traveling expenses and traveling loss, but not for any specific individual.

Q. I have made the general representation to you in the one conference we have had or two that anyone who had sustained loss by not being totally reimbursed for traveling expenses or moving expenses by reason of transfer, should offer such claims.

A. That is right.

Q. How about Mr. Ross? Is that also a case where there was no time lost and it is a question of moving expenses?

A. Yes. He was transferred to Los Angeles.

Q. How about Mr. Swift? [2437]

A. Mr. Swift lost four days' salary and he also drove his own car out for which he was not reimbursed.

Q. With respect to those employees that are set forth in BRC Exhibit B and Supplement B who have returned to the employment of Western Air Lines subsequent to having been furloughed on or about the time of the sale of Route 68, is there any need for the consideration or application of the Burlington formula provided they are reimbursed for moving expenses and whatever time was lost?

A. For those employees that we know of now who were affected as a result of the sale, that is quite true, there would be no need for the Burlington formula.

Q. What is your position with respect to these employees that were furloughed, for example, on August 16th or 17th, which was nine or ten days

(Testimony of Lyle McKinney.)

prior to the Board's decision and which was one month prior to the actual transfer of Route 68? Is it your opinion that they were adversely affected?

A. Yes, I believe so. Specifically the three girls: Bower, Lisco and Tomlin were passenger supply clerks. The flights were taken off and the entire department was abolished.

Q. They were released at the same time that Western effected a reduction in its schedules on Route 68 or subsequent thereto. In other words, at one time we had four round trips and in August it was reduced to two? A. Yes.

Q. As a result of that reduction, they were furloughed. Supposing the sale of the Route 68 had not been approved and Western had continued to operate it with two schedules, would [2438] it have been necessary to recall these people? They were furloughed on August 16th or 17th.

A. It may or may not have been. It all depends on whether Western was going to handle their commissary business on a contract basis with another carrier as they did. Up there for the little remaining commissary work that there was there to be done, had they not have sold the route—I am not so sure that they might have contracted out.

Q. That raises a very interesting and important question which I believe is germane to the issue in this proceeding. Assuming that at Los Angeles, at the present time, Western were to enter into a contract with Pan American, whereby Pan American would perform all of Western's work on the airport

(Testimony of Lyle McKinney.)

just as now do for Pan American, and as a result thereof, it would be necessary to release, furlough or terminate a number of Western employees; do you think under those circumstances that those employees would have any claim for compensation on any basis?

A. Not on the basis of this here, and now we have an agreement in effect covering the craft and class. We would be faced with a scope violation of the rules of agreement.

Q. As I understand your testimony, in this hypothetical situation which I put to you which I represent as being somewhat analagous to the August 16th situation pertaining to Miss Bower, that if that were to come about, you would take the position that jobs should still be made available for those employees?

A. I would take the position that the company would not have the right to transfer any work out from under the scope rule [2439] of that agreement except by agreement with the organization.

Q. If that is the case, how can you ever effect any economies through consolidations, mergers and otherwise if after there has been such a consolidation the carrier is precluded from releasing or furloughing the employees which are then unnecessary?

Mr. Crawford: Mr. Examiner, I want to object to that question as argumentative and simply calling for a conclusion. It has nothing to do with this particular issue.

Examiner Wrenn: I grant you that, but if Mr.

(Testimony of Lyle McKinney.)

McKinney wants to philosophize as to his personal feelings, I will let him go ahead. You are entirely correct. I don't see what bearing it has on the particular issue.

The Witness: I don't mind stating that there would be no need of having an election and certification as a representative if the company can take the work away from the employees that have been certified to perform the work.

Q. (By Mr. Renda): Isn't it a fact that the reason the BRC strongly urges the Burlington formula in this proceeding is because it is designed to freeze employees in their employment——

A. No.

Q. ——and preclude a carrier from furloughing or terminating an employee when exercising certain economy measures?

A. No, that is not correct.

Q. On August 16th, Miss Bower and on August 17th Miss Callahan were terminated. This was prior to the sale of 68, prior to the Board's decision, prior to the transfer. [2440] It was due to a schedule cut-back. How were they adversely affected by the sale?

A. If you can prove that, then they would be eliminated. However, the rumors were rife all over the property at the time that the sale was going to be approved and that the entire commissary department would be abolished as a result of the sale.

Q. Turn to your Exhibit A which is a so-called

(Testimony of Lyle McKinney.)

statement of the Burlington formula. It is the BRC's position that in the event the Board were to find that certain employees belonging to the class and craft you represent were adversely affected, that the applicable remuneration provision is one which should be borne by both Western and United or by just Western or just United.

A. I will leave that up to the Board to decide.

Q. You have no position one way or the other?

A. No.

Examiner Wrenn: There is no question anywhere that this Exhibit A is the Burlington formula?

The Witness: That is right.

Examiner Wrenn: Proceed, Mr. Renda.

Q. (By Mr. Renda): With respect to these employees that were transferred and are still in the employ of Western, you make no claim for displacement or disallowance compensation?

A. Those that are still in the service?

Q. Yes. A. No.

Q. Your claim, if any, is limited with respect to [2441] displacement, those who have accepted other employment which may be less in payment from what they were previously receiving.

A. It could be that way. As a result of displacement rights, certainly employees at the bottom of the roster, wherever they might have been located in the system, were affected if they were displaced and placed in a furlough status.

Q. You are aware that in the air line business

(Testimony of Lyle McKinney.)

there is no such thing as permanency of domicile with many classes of employees. You recognize that to be a fact, do you not?

A. Among the younger employees that might be literally true, but not in all cases.

Q. Don't you feel that the application of a provision such as is set forth on page 6, which deals with sale of property or compensation for settling lease-hold interests and et cetera, would tend to preclude a carrier if it were saddled with such a condition from the freedom it requires to move people from one station to another?

A. Are you talking as a result of sale or in the normal application of the exercise of their seniority under the agreement provisions?

Q. Let us take them one at a time, as a result of the sale of the route, what do you think about that?

A. I think they are entitled to a reasonable amount of protection in the sale of a route.

Q. Let us take, for example, a case of an employee in Denver who bought a home in 1942 and was then, as a result of the sale of Route 68, transferred to San Francisco. He [2442] had to sell his home in Denver. Is it your opinion that the Burlington formula with respect to that provision only would apply in the event he sustained a loss on the sale of his property?

A. If the Board adopted that provision.

Examiner Wrenn: Read the question, please.

(Question read.)

(Testimony of Lyle McKinney.)

Q. (By Mr. Renda): I am asking for your opinion.

Examiner Wrenn: He answered it. Read it.

(Answer read.)

Q. (By Mr. Renda): What would you recommend to the Board with respect to that situation, that they should or should not adopt it in that case?

A. We have recommended the formula here, haven't we?

Q. So then I am to conclude that your answer would be yes?

A. If the employee suffered a loss in the sale of his house, I think he should be reimbursed by the company.

Q. What if the employee sustained a gain, should that be turned over to the company?

A. No, I don't think it should be turned over to the company.

Mr. Renda: No further questions.

Examiner Wrenn: Mr. McErlean, you may examine.

Cross-Examination

By Mr. McErlean:

Q. Mr. McKinney, has the BRC been certified as the [2443] representative of any of United's employees? A. No, sir.

Q. Has the BRC ever claimed to United that it represent any of its employees?

A. They have not.

(Testimony of Lyle McKinney.)

Q. Do you now, in this hearing, claim to represent any of United's employees?

A. We do not.

Q. Turning to your Exhibit A, on the first page thereof, about the fourth line in paragraph No. 1, you request that the Board apply this Burlington formula to an employee of either carrier. Do you make that claim against United, or this formula you are proposing to apply only against Western?

A. Well, as I said before, at the time this was drawn up, we didn't know what the circumstances were in either case insofar as United was concerned. The same thing was true with regard to Western because we were in the midst of a representation dispute.

Q. When was Exhibit A drawn up, Mr. McKinney?

Mr. Crawford: I think I can answer that for him.

Mr. Renda: Last fall, I think.

Examiner Wrenn: I have a letter here signed by Mr. George M. Harrison addressed to me dated November 12, 1948. I had attached to it copies of the Brotherhood's exhibits. I don't know if they are the same ones that are being offered here today or not. Would it help you any, Mr. Crawford, if I show you this letter?

Mr. Crawford: I think I can clear that up. I think he wants to go back further than that. I will explain that. [2444]

Q. (By Mr. McErlean): You say you were in

(Testimony of Lyle McKinney.)

some dispute at the time Exhibit A was drawn up?

A. A representation dispute.

Q. That was prior to the consummation of this sale, wasn't it? You already testified you were certified on September 9, 1947?

A. That is right.

Q. Is that when Exhibit A was drawn up?

A. After that.

Q. You didn't have a representation dispute after you were certified, did you?

A. No, we had another kind of dispute after we were certified.

Q. What was the dispute which caused you to include in Exhibit A a request for conditions to be imposed against United?

A. We thought that there might be some employees as a result of this sale, Western employees, who would be absorbed by United. The thought at the time was, if there were, and they were not placed in the same position as other employees, they should be given the same protection.

Q. Can you explain it a little more?

A. If a Western employee owned his home in Denver and he was forced to move to San Francisco as a result of the sale and had to take a loss on his house, we would provide in the agreement that the loss would be made up to him by the carrier.

Q. What carrier? [2445]

A. Western Air Lines, if it is a Western Air Line employee. If you absorb an employee as a result of that, he would be given the same protection by United as a Western employee.

(Testimony of Lyle McKinney.)

Q. If we have hired any employees of Western since the date of consummation, do you say they have some sort of protection?

A. No, any of the employees you have hired since that time—this would not be applicable to them. Insofar as I know, you didn't take over any, so this wouldn't be applicable to you.

Q. Were you under the impression that United had agreed to take over as part of the assets some of the employees of Western?

A. I didn't know.

Q. Was your organization represented at the hearing before this Board in May of 1947?

A. I think they were.

Q. You heard the President of United Air Lines testify? A. No, I wasn't here.

Q. Did you ever examine the agreement of purchase? A. No.

Q. Did you know when Exhibit A was drafted for purposes of filing with this Board?

A. I would have to guess on when the final draft was ready.

Q. Wasn't Exhibit A drafted and prepared some time in the fall of 1948?

A. I think that is correct, yes.

Q. Approximately a year after United started to operate [2446] Route 68? A. That is right.

Q. Do you know of any employee in United Airlines who was adversely affected in your sense

(Testimony of Lyle McKinney.)

of those terms by United's acquisition of Route 68?

A. I do not.

Q. Are you claiming some formula should be placed in effect by the Board to affect United's employees?

A. No. That is up to the Board.

Q. I am asking you whether you make that claim to the Board?

A. No.

Q. Is your position asking this Board to put into effect some condition that will operate to the benefit or detriment whatever it may be of United's employees?

A. No.

Mr. McErlean: I have no further questions.

Examiner Wrenn: Mr. Kennedy.

Cross-Examination

By Mr. Kennedy:

Q. Does the Brotherhood have a system-wide seniority list of the employees it represents?

A. Yes. The agent classification and Western classification and the store's employees are all system-wide seniority rosters.

Q. Do you have any other kind of seniority roster? Do you have one that is confined to a base?

A. General office employees located in Los Angeles.

Q. That is just Los Angeles seniority? [2447]

A. Yes.

Q. Could you tell me what classes of employees the Brotherhood represents?

A. The designation is clerical, office, stores, fleet and passenger service employees. That embraces

(Testimony of Lyle McKinney.)

ticket agents, reservation agents, cargo handlers who load and unload the freight—all types of clerical employees and commissary employees who handle the food.

Q. Do you know whether comparable employees of United Air Lines are organized in any union or Brotherhood?

A. To the best of my knowledge, they are not. A part of them may be organized, but to the best of my knowledge, no.

Q. Assuming that the application of the Burlington formula was limited to Western employees, do you have any thought as to whether Western should bear all of the liability under the formula or whether United should bear half or whether United should bear all? What would be the best solution?

A. I would leave that up to the Board. I have no opinion on that.

Q. You don't have any proposal on that?

A. No.

Mr. Kennedy: That is all, Mr. Examiner.

Examiner Wrenn: Are there any other cross-examination questions?

Mr. McErlean: I have some.

Further Cross-Examination

By Mr. McErlean:

Q. Don't you know United store's employees are represented [2448] and organized by a labor organization? A. I don't.

Q. If I asked you the same question about our

(Testimony of Lyle McKinney.)

cargo or ramp service employees, would your answer be the same?

A. The last information I had on it, I understood that they were under contract with District 50, United Mine Workers; whether they still are or not, I don't know.

Q. You are a little out of date.

A. I could be.

Q. Are you active in organizing this industry on the West Coast?

A. Not on United Air Lines.

Q. I said in the industry. A. Yes.

Q. And you have no information as to who may represent United's ramp service employees and janitors? A. No.

Mr. McErlean: That is all.

Redirect Examination

By Mr. Crawford:

Q. With reference to Mr. Cassidy, do your records show that he did lose some time after he was furloughed and the time after which he accepted a transfer or some employment with Western?

A. Yes, he lost salary in the 25th. He was offered employment on the 23rd. He resumed work on the 25th. He lost salary from the time he was furloughed until the time he resumed work.

Q. With reference to Mr. Renda's offer to you to pay [2449] those that had transferred, which he did, was that a separate transaction on each one, or was it with reference to a conference you were having in an attempt to work out some agreement?

(Testimony of Lyle McKinney.)

Were there any conditions attached to the offer, or was that just an out and out offer to take each one down and pay the transportation?

A. Mr. Renda indicated at the last conference—unfortunately we didn't get to see each other again because of the unavailability of first he and then myself—but at the last conference, Mr. Renda indicated it might be possible for us to go down the list name by name and determine who had suffered a loss of traveling expenses and salary loss and he said he was quite sure the company would be willing to pay the employees.

Q. That was the limit of his offer, that he would offer to pay the employees? A. Yes.

Q. There was one other question Mr. Renda asked you. I think it was with reference to that part of the Burlington formula on the payment of employees who have been displaced. He said in substance—naming two or three employees—the record showing the nature and extent of their adverse effect just shows transfer.

The displacement provision of the Burlington formula would not be necessary as to those employees. I think you explained that a little later, but I would like to ask you this: That would only be applicable to those particular employees. Isn't it a fact that those employees who would transfer from Denver to San Francisco, would possibly bump or displace some other employee and on down to the line to [2450] the end of the chain?

(Testimony of Lyle McKinney.)

A. That would be true among the cargo group of employees who were under contract.

Q. I just wanted to establish this: As to the employees who have suffered no displacement regardless of their loss of traveling expense and so forth, the displacement provision would not be necessary to them; but as to any employee who had been displaced by reason of their transfer, then the displacement provision would be applicable, would it? A. That is right.

Q. Getting back to Mr. Elliott, I think I didn't get all of the information on Mr. Elliott. Did he lose any time in between the time he wrote the carrier? I think you produced a copy of a letter at the request of Mr. Renda.

A. Well, after Mr. Elliott was furloughed, he never performed any service again for Western Airlines. He never heard from them regarding the exercise of his displacement right. He hired out with Monarch Airlines and went to work for them.

Q. The copy of the letter you showed to Mr. Renda had relation to that? A. Yes.

Q. Is the copy of the letter you have in your hand the one handed to Mr. Renda and the one which he read? A. That is correct.

Mr. Crawford: I offer it in evidence. It is only a copy.

Mr. Renda: I have no objection. [2451]

Q. (By Mr. Crawford): Please read that letter into the record, Mr. McKinney.

A. This letter is dated August 23, 1947. It is

(Testimony of Lyle McKinney.)

addressed to Mr. Eastman, Western Airlines.

“Dear Sir:

“Your letter August 20, 1947, in regard to my furlough effective September 2, 1947, received.

“Would like very much to exercise my seniority rights by asking for a transfer to another Western Airlines Company station.

“Thank you.”

It is signed by Arthur R. Elliott, Denver Cargo.

Q. It is your understanding he never received any reply? A. That is all.

Recross-Examination

By Mr. Renda:

Q. In connection with the question which Mr. Crawford asked you on redirect, let us take the case where an employee of Western was transferred from Denver to San Francisco, and by exercising his seniority there pursuant to the contract, it may result in the furloughing of some employee further down on the list. Is that not the same situation as would happen in the event of a curtailment on the part of Western when there is no route transfer involved? A. Yes, sure.

Q. With respect to the moving expenses, do you recall having had a conference in December of thereabouts of 1948, I believe, with Mr. [2452] Kelly? A. That is right.

Q. That was a conference with respect to these matters at the suggestion of the Board?

(Testimony of Lyle McKinney.)

A. Not with respect to these matters. It was my understanding that what we were instructed to do was to attempt to meet and agree upon a formula similar to the Burlington formula. Mr. Kelly was not agreeable to negotiating any formula. His position was that if there were any employees adversely affected, name them, and let us talk about them.

Q. Isn't it a fact that at that conference Mr. Kelly asked you to submit to the company a statement setting forth what employees had not been reimbursed for moving expenses and transportation cost, and so forth, brought about by their transfer from one station to another, do you recall that?

A. I recall Mr. Kelly asking us to name the employees who were affected, but he wasn't willing to negotiate any formula.

Q. In any event no such claim has ever been submitted to Western either by these individual employees or by the Brotherhood on behalf of these employees?

A. I believe that there is one who has presented his claim, but he has had no settlement of it.

Q. Do you know that from your own knowledge?

A. From my own knowledge of what he told me.

Q. Who is that person? A. Mr. Ross.

Q. Mr. Ross? A. Yes.

Q. When did Mr. Ross submit his claim? [2453]

A. Prior to the time he was transferred from Denver to Los Angeles, a request was made to have the company assume his expenses. They were declined before he ever started the trip.

(Testimony of Lyle McKinney.)

Mr. Renda: That is all, Mr. Examiner.

Examiner Wrenn: Is there anything more, Mr. Crawford?

Mr. Crawford: That is all.

Mr. McErlean: I would like to ask another question in the light of what Mr. Crawford asked him.

Examiner Wrenn: Go ahead.

Cross-Examination

By Mr. McErlean:

Q. Did I understand you to say that this displacement provision would apply to somebody on down the line if somebody moved from Denver to San Francisco and a younger man were displaced? Did I understand your testimony properly?

A. It is possible that that man was adversely affected as a result of the sale of Route 68. If an employee in Denver is displaced and he exercises his seniority right—

Q. If a man went from Denver to San Francisco and no one was laid off at that time—but if a man was laid off tomorrow, would this formula apply?

A. I don't think so.

Mr. McErlean: That is all.

Examiner Wrenn: Thank you.

(Witness excused.)

Mr. Crawford: I renew the offer of my exhibits in evidence.

Examiner Wrenn: Is there any [2454] objection?

(No response.)

Examiner Wrenn: They will be received in evidence.

(The documents heretofore marked Exhibits BRC-A, B and Supplement B, for identification, were received in evidence.)

Mr. Crawford: This morning you made a statement before Mr. McKinney took the stand that there was no agreement between Western and the Brotherhood. It was obvious you were referring to this particular transaction and not to the fact that there is a collective bargaining between the parties. There is no such question that we know of.

Examiner Wrenn: That completes your case, Mr. Crawford?

Mr. Crawford: That completes my case.

Examiner Wrenn: Again, I will ask if anyone from the UAW-CIO is here.

Let the record show no appearance was noted the first day and there has been no response since from them.

Mr. Renda, will you proceed with your case?

Mr. Renda: I call Mr. Arthur F. Kelly.

Whereupon

ARTHUR F. KELLY

was called as a witness on behalf of Western Airlines, Inc., and having been first duly sworn, was examined, and testified as follows:

Mr. Renda: At this time, Mr. Examiner, I pre-

(Testimony of Arthur F. Kelly.)

sent herewith two copies of exhibits which I would like to have identified as W-1 through W-18 and WR-1 through WR-7.

Examiner Wrenn: Those are the exhibits which have been previously distributed to the parties?

Mr. Renda: With the exception of WR-7 which I am now [2455] handing to counsel. These are certain percentages I have reduced to figures overnight rather than having Mr. Kelly testify in detail.

Examiner Wrenn: Those documents which you have just referred to will be marked for identification, as requested.

(The documents referred to were marked W-1 through W-18, inclusive, and WR-1 through WR-7, inclusive, for identification.)

Direct Examination

By Mr. Renda:

Q. Please state your name for the record.

A. Arthur F. Kelly.

Q. What is your position?

A. Vice President, Traffic.

Q. How long have you been Vice President of Traffic? A. Just recently.

Q. Prior to that what was your position?

A. Executive Assistance to President of Western Airlines, Mr. T. C. Drinkwater.

Q. All told, how long have you been in the employ of Western Airlines? A. 13 years.

Q. In your capacity as Assistant to the President of Western Airlines, did you have occasion to

(Testimony of Arthur F. Kelly.)

study, review, consider and deal with the issues in this particular case? A. I have.

Q. Were Exhibits W-1 through 18 and WR-1 through 7 prepared at your direction and under your supervision?

A. At the request of Public Counsel under my direction [2456] and supervision.

Q. And with the exception of Exhibits W-12, 13, and 14 which are reproductions of certain labor contracts, you sponsor these exhibits?

A. Yes.

Q. Will you please state Western Airline's position in this case.

A. It is Western Airline's contention that no employees of Western Airlines were or have been adversely affected as a consequence of the transfer of Route 68 and certain physical properties to United Airlines.

It is further the contention of Western Airlines that such alleged consequences do not lead to any necessity for the application of the Burlington formula or any so-called formula to take care of any employees allegedly adversely affected by this transaction.

The attachment of such conditions to the Board's original decision on Route 68 is not necessary because to the best knowledge of Western Airlines no such problem exists for the application of such a formula.

I think to present Western Airlines picture in its prospective we have to go back to the end of

(Testimony of Arthur F. Kelly.)

about 1946 and the beginning of 1947 when Mr. Drinkwater took over the active management of Western Airlines. I refer you to Exhibit No. W-5, page 1—

Q. WR-5.

A. —as a guide to follow in the general problems of Western Airlines.

At the end of 1946, Western Airlines found itself in [2457] the same relative category as many of the other airlines. They were over-staffed. Their equipment program had not been consolidated or solidified. An economy program was necessitated by virtue of the various economic circumstances facing the industry at that time.

Western entered into a broad economy program at the end of 1946 and the beginning of 1947 to the extent that in the latter part of 1946, Western Airlines had approximately 2486 people. By December, 1948, the figure had been reduced to 1290 people.

This program has been difficult. Consolidations and personnel cut-backs have always been far more controversial, hazardous than expansion and luxurious specialization. The issues involved in these cases are examples of some of the difficulties that economic operations will present and have presented to airline management.

To break this down, we can put this into two classifications. The first classification is the pilot classification. Western Airlines' position with regard to the pilot problem is that, and it has restated

(Testimony of Arthur F. Kelly.)

its position time and time again, if this problem of transferring Western pilots to United Airlines can be worked out with ALPA and United Airlines, Western interposes no objections provided we receive sufficient time to train pilots who must necessarily be used as replacements for pilots that might be transferred to United.

It should be clearly understood by the Board that Western is not denying or affirming the right of the Board to direct the transfer of these pilots, nor are we admitting [2458] that any pilots were adversely affected by reason of the sale of Route 68. It is the honest opinion of Western Airlines, based on factual data, that the Board would be treading on dangerous ground to allow ALPA to take advantage of normal seasonal cut-backs, to set up a far-reaching precedent which might possibly affect the very economy of airline operation.

It is well known that unfortunately year after year—

Mr. Bennett: Just a minute, if I may. I think we passed from a category of testimony and facts into argument. I don't think this is a proper place for that. I would suggest that he testify as to facts that he knows. I think that is the proper prerogative of a witness.

Examiner Wrenn: I want him to testify to the facts. Go ahead, Mr. Kelly.

Q. (By Mr. Renda): Continue please, Mr. Kelly.

A. It is well known that unfortunately sea-

(Testimony of Arthur F. Kelly.)

sonal cutbacks must be effected in order to maintain stable economy within the airlines. The pilots that were furloughed by Western Airlines on September 15th were not furloughed as a result of the sale of Route 68, but by many factors basically founded on low load factors and the seasonal decline in business.

That would not allow Western Airlines in interest of economic and efficient management to continue a peak operation in the fall of 1947. These conditions also existed in 1946 and 1948.

We feel that the airlines are a young and mobile business [2459] and that unfortunately they have not yet settled to the point where they can guarantee domicile, places and types of training and other matters effecting economic transfers, consolidations and efficient utilization of equipment.

Turning to the other problem in this case, ground personnel, Western can only state that such reductions in force followed pretty well the pattern of the general industry personnel reductions. It can be further added that the cutback started when Mr. Drinkwater came with Western Airlines beginning January 1, 1947, and it is continuing.

As an example, at the same time we were reducing personnel in Denver, at the time of this sale, many more personnel in the same classification were being reduced for instance in Salt Lake City which had nothing to do with the sale of Route 68.

There is an example of this in the mechanical personnel. The average reduction in Denver was

(Testimony of Arthur F. Kelly.)

35 per cent, as I recall. Our average reduction in Salt Lake was 68 per cent. It was a system reduction, pure and simple.

As far as the application of the Burlington formula is concerned, as it applies to ground personnel, we have a few notes to make on that. We have not analyzed it in complete detail. At the request of the Board we had informal discussions. It is basically impossible for an organization to analyze a formula unless they know the scope of their financial responsibilities in such a thing.

At no time were we able to get together with parties involved to determine exactly what our basic financial responsibilities would have been. As a result, we did not [2460] analyze it thoroughly. It has been the contention, as I mentioned before, of Western that no one was adversely affected by the sale of this route. Such a formula was not applicable to this particular problem.

In passing, I might say that just briefly reviewing the Burlington formula, we have in our standard operating procedures, which affect all types and classes of employees in Western Airlines, several items incorporated from the Burlington formula. These are examples of it. I will read that section that has some application to some of the points of the Burlington formula. I would like to read it in the record.

Mr. Bennett: Examples of what?

The Witness: Standard operating procedures.

(Testimony of Arthur F. Kelly.)

“Oral requests will not be considered as the basis for granting a transfer.

“Rates: A. Movement of household goods. (1) When an employee is transferred at the company’s request he shall be allowed actual reasonable moving expenses for household effects up to a maximum of eight hundred (800) cubic feet or 5200 pounds, if substantiated by properly receipted bills for shipping, insurance, drayage, packing and unpacking, indicating the number of cubic feet or its equivalent of household effects being handled. The company may at its option prescribe or control the shipment from the time of packing at the point of departure to the time of unpacking at the time of arrival.

“B. Travel and subsistence allowance. (1) Transportation. (a) By personal car: When an employee is transferred [2461] from one station to another at the company’s request and his car is driven from his former domicile to the new station he shall be allowed actual cost of gasoline and oil if substantiated by receipts therefor, or at the employees option, the rate of five cents (5) per mile by the shortest highway mileage between such points. (b) Other means. If the employee being transferred does not drive his personally owned automobile, he will be supplied free pass transportation to the new station, or will be reimbursed actual expenses for rail, bus or air transportation as authorized by travel orders. (2) Subsistence allowance: In addition to moving and transporta-

(Testimony of Arthur F. Kelly.)

tion allowances, an employee transferred at the company's request to a new station shall be allowed his actual hotel expense if substantiated by receipts, and in addition shall be allowed a per diem allowance of four dollars (\$4.00) per day while enroute. The provisions of SPI 2-1, paragraph b (2) shall govern the computation of the per diem allowance to which the employee shall be entitled. (3) Any employee who transfers from one station to another pursuant to the exercising of seniority rights under any union agreement, and who is not requested by the company to make such transfer, or any employees transferring at their own request shall pay all costs incurred by him as a result of such transfer, such as transportation (except for furnishing of subject-to-space transportation when such move can be successfully made by plane), movement of household goods, and travel expenses."

Q. (By Mr. Randa): Is that standard company policy which applies to [2462] all employees whether under contract with some labor organization or not? A. That is correct.

I might add that we follow this procedure as carefully as we can. However, if there are some cases, as we have restated to the Brotherhood as well as individual employees, by virtue of some of the supervisors overlooking the responsibilities of Western Airlines, we restate if proper claim and proper record is made, we will enforce it and it will be considered with its proper merits under company policy.

(Testimony of Arthur F. Kelly.)

Q. Do you have any further remarks to make with respect to the Burlington formula?

A. Yes, just general comments.

I would like to add that this is a young and mobile business. We don't feel at the present time we can be saddled by what we might call additional unemployment insurance. Any further responsibilities taken over by the airlines corporately or by virtue of air mail pay does not seem consistent with the mobility and necessity to effect certain constructive moves within this industry. We feel it will have a tendency to discourage consolidations, mergers and other constructive moves set up by the Board as part of their general policy.

I think a very good example of some of the difficulties involved in this is: Where does it stop? Where does it start? As an example, is it going to affect station consolidations? Is the Burlington formula going to be applied to schedule cut-backs? In this particular case that we are speaking of, we don't feel it has any application. We feel it is going to set up a bad precedent and it is going to be [2463] a serious mistake on the part of the airlines to accept this formula.

We feel it is filled with railroad philosophy. There are good things and bad things in the railroad business. Generally speaking, if a formula of this type is necessary, the airline should build one in proportion to the dynamic character of the industry itself.

I would like to add one more thing: We agree

(Testimony of Arthur F. Kelly.)

that certain thought should be given to this problem, but we think those efforts on the part of the Board and industry should be directed to something like this: If as a result of circumstances, either transfers, schedule cut-backs or other items pertaining to the industry, personnel are involuntarily cut back, especially the skilled personnel, personnel like mechanics and pilots, we feel there is a definite responsibility on the part of our Government to recognize that as a waste as far as the national defense is concerned.

Western Airlines at the present time is setting up a military air transport reserve unit within the confines of our maintenance and administrative buildings in Los Angeles and we hope that one of the objectives of that will be to absorb pilots on a seasonal basis when they are furloughed temporarily from the airlines.

We have looked with a great deal of concern over the tremendous waste of specialized personnel caused by seasonal cut-backs. We feel that that is a partial answer to keeping this reservoir of skilled personnel constructively utilized at the periods when economics within an airline company as an example make it impractical to continue their employment, [2464] especially the junior men throughout the season as a whole.

Q. Mr. Kelly, in the event the Board should find in this case that certain employees have been adversely affected, and condition No. 2, that they should be taken care of by the application of either

(Testimony of Arthur F. Kelly.)

the Burlington formula or something similar to it which would result in Western having to pay a substantial number of claims in money damages, what would be Western's position?

A. There is no question in my mind that if Western Airlines is faced with a substantial payment, retroactive, they would defer any payment until they could present their mail case so they could present it as a legitimate expenditure, providing management is honest, efficient and economical.

Q. Will you refer to WR-2. Will you please explain why in this daily flying time study you have used the dates July 6, August 6 and September 19, 1947?

A. July 6 was used in this study because at some of the informal conferences we had, it was at that time ALPA's position this was a normal operating month. I might qualify by stating we don't agree on that. We have used it for the sake of comparison.

Q. I invite your attention to the concluding figures of 141 hours and 50 minutes, total flying time as of July 6, 1947, and 111 hours and 55 minutes as of September 19, 1947, resulting in a decrease during that period of time of 29 hours and 55 minutes. Will you please explain the causes which brought about that decrease?

A. I might preface that by stating that the August 6 filing date in this analysis was the filing date of the [2465] beginning of the August schedule. The September 19th date was the filing date of our

(Testimony of Arthur F. Kelly.)

complete schedule cut-back in addition to the termination of Route 68.

Q. Will you please explain in detail the schedule cutbacks which resulted on September 19th and the flying hours involved in each segment? First let us take Los Angeles-Salt Lake City.

A. First, let me say this is a practical approach to a daily flying time study. It would definitely have an effect on pilots and utilization of equipment. It is noted that from July 6 to September 19, that is what ALPA considers a normal operating month of the entire period, over to September 19, which was the date of our complete schedule cut-backs, September 19, there was 6 hours and 30 minutes taken off the Los Angeles-Salt Lake run.

Q. What happened with respect to the Salt Lake-West Yellowstone run?

A. 4 hours 30 minutes was taken off.

Q. What happened to Los Angeles-San Francisco?

A. 8 hours were taken off that run.

Q. How about the Great Falls-Butte segment?

A. 1 hour and 30 minutes.

Q. For a total decrease in flying hours brought about by schedule cut-backs of how many hours?

A. These schedule cut-backs attributed to pure and simple seasonal cut-backs which amounted to 20 hours and 30 minutes.

Q. Have you any reasons to account for the 9 hours and 55 minutes which is the difference between the 20 hours and 30 minutes you just testified

(Testimony of Arthur F. Kelly.)

to and the 29 hours and 55 [2466] minutes indicated on this exhibit?

A. The 9 hours and 55 minutes—there was 2 hours and 50 minutes taken off—looking at the system as a whole—there was 2 hours and 50 minutes taken off of the Rapid City-Sheridan cut-off, as I recall it.

Two hours and 50 minutes was taken off the Billings-Great Falls segment. The system was 5 hours and 50 minutes additional. That leaves a net of 4 hours and 15 minutes.

Q. Will you please turn to Exhibit WR-4. Will you please tell us what that exhibit purports to show?

A. I think as you look at the general trends that it purports to show through 1946 the build-up in the spring and the cut-back in the winter and in 1947, the build-up in the spring and the cut-back in the winter and in 1948, the build-up in the spring and the cut-back in the winter. That is about the only thing I can say that graphically depicts as far as our operation is concerned.

Q. Please turn to WR-5 and tell us what this shows.

A. This curve reflects the history of employment. I think it reflects it started in June of 1947. I think the personal cut-backs were fairly consistent with the load factors up to August and September—73 per cent. October, 56 per cent load factors. November, 49 per cent load factors. December, 54 per cent load factor.

(Testimony of Arthur F. Kelly.)

It has a certain effect on indicating the wisdom of schedule cut-backs as far as business is concerned and in turn, as they reflect utilization in personnel.

Q. Is it your opinion that there is a direct relation between load factors, seasons and the number of personnel [2467] required?

A. There is no question about it.

Q. Would you please turn to WR-6 and tell us what that exhibit purports to show.

A. This exhibit purports to show through the month of December the progress that was made throughout the year 1937 to '38. It reflects the ton-miles flown on Western and Inland and the available ton-miles flown per employee. Anytime you can get those curves flown that close together, it reflects a reasonable and efficient management. In 1946 the available ton-miles and the production line being so far spaced, it indicated a certain over-staffing and a certain lack of production. The closer you get them together, the more efficient your company can be according to the individual unit in proportion to the load you are carrying.

Q. Would you please refer to Exhibit W-6 in the bound volume?

A. This exhibit is supplied at the request of Public Counsel. It is a comparison of pilot hours flown on Route 68 as of July and August 1947 and pilot hours flown between San Francisco, Seattle and Portland during July 1948. I would just like to point out one thing on this as far as the normal operation of these various route segments are con-

(Testimony of Arthur F. Kelly.)

cerned. At this time, I was chairman of the Schedule Committee to schedule these aircraft. At the time that we started operation from San Francisco to Seattle, it was done in stages. The first stage was August 1st. The second stage was in September. There is no question in my mind that had we continued to have flown Route 68, the only schedules that that route could have sustained, would have been two schedules. [2468]

Q. What forms the basis for that opinion?

A. In scheduling aircraft, one must necessarily forecast and look ahead as to the effect of changing conditions on scheduling.

Let me go back one step further. There was a time we flew six schedules on the LA-Denver operation. Many people were extremely encouraged about the potential of that segment, but it must be borne in mind, and I say this without retrying or reopening the Route 68 case, one of the primary reasons why that route was considered for sale was that in effect it is definitely a part of a transcontinental route structure.

In 1946, when Western Airlines was able to fly six schedules, it must be borne in mind Western Airlines was the only major line connecting with United at Denver that had four-engine equipment. We first inaugurated the post-war DC-4. It was an attractive service to the public in Los Angeles, Chicago and New York even though it was a connecting service in Denver.

Changing conditions brought about by the advent

(Testimony of Arthur F. Kelly.)

of American, TWA and United which brings us to the point of 1947, when about 40 per cent of our business was the business of Denver. Throughout that summer, even though load factors were high, we could see the coming effect on Western's ability to compete in that market based on the equipment TWA and American were bringing into effect in the spring of 1947.

On May 19, 1947, it was announced that United Airlines, and TWA would be allowed route consolidations allowing them to fly [2469] non-stop New York-Chicago-Los Angeles.

That was bound to affect between 37 and 40 per cent of our business. United was going to sell trans-continental business on their non-stop. They didn't put that into effect in July, 1947. They were getting geared up to press hard their non-stop advantages out of the LA market. In our company relationships, we were beginning to see the effect that was going to have on us.

Formerly we were all enthused. United was gradually working on its non-stop operation. Borne out by the load factors from September 15 to October 15, even though our load factor on our two schedules beginning August 1 were high, the load factors started gradually diminishing. In my responsibility, in scheduling that aircraft, had we continued to fly it, we would not have flown it with more than two schedules.

Q. You are familiar that in the summer months

(Testimony of Arthur F. Kelly.)

of 1948 you only operated two passengers schedules over Route 68?

A. It is quite obvious. It must be borne in mind where our break-even load factor at the present time is 45 per cent, as I recall, the break-even load factor in Western was about 65 per cent and the break-even load factor on United was 65 and 70 per cent.

Examiner Wrenn: You didn't pay much attention to an LA-Twin City operation in there, did you?

The Witness: Yes, we had connections from LA to Twin Cities on that, Mr. Examiner.

Examiner Wrenn: You are testifying here that you would have had two schedules without regard to that?

The Witness: Yes, sir, I testified we would have two [2470] schedules. In the peak period of 1948 when United was flying two schedules, we worked out direct connections between LA and the Twin Cities through the Denver gateway.

Q. (By Mr. Renda): In connection with the question the Examiner just asked you, Mr. Kelly, isn't it a fact since Western has been operating a non-stop DC-3 service between Denver and Minneapolis, that that service other than during peak summer months has been only able to support one DC-3 schedule?

A. Yes. I don't think there is any question about the potential and the traffic and the market that is there. I think the Examiner is correct in his observation on that.

(Testimony of Arthur F. Kelly.)

Q. Will you refer, again, to Exhibit W-6?

Please tell us if in your opinion August and September should be considered the normal operating period on which a comparison should be made with the number of additional hours flown north of San Francisco to Seattle rather than February and July, as indicated by the ALPA?

A. I don't think you can generally classify a normal operating month, but certainly August and July cannot be considered a normal operating period.

Q. In any event, in your opinion, if Western had continued to fly Route 68 subsequent to September 15, 1947, it would not have been able to have supported more than two DC-4 schedules?

A. I do not think so.

Q. Will you please turn to Exhibit W-8?

A. This is the letter written by Chief Pilot Thayer to all pilots dated September 4th wherein he identifies by name [2471] 23 pilots who were to be furloughed effective September 19th.

Q. Do you know how many of the 23 were hired for the first time by Western subsequent to the commencement of the hearing in this proceeding on May 20, 1947?

A. Seven of these men were hired after the hearing on Route 68.

Q. Which 7?

A. Kettler, Critchel, Taylor, Edgerton, Meford, Hippe and Keys.

Q. You will note that Beach and Peterson

(Testimony of Arthur F. Kelly.)

elected to go on furlough rather than transfer to Denver. A. That is correct.

Q. Of the remainder, other than the 7 you just named, and Beach and Peterson, how many of those were recalled to flying status in the spring of 1947? A. 13 in this group were recalled—

Q. I mean the spring of 1948. A. 1948.

Q. In other words, the remainder of those names set forth in that letter. A. That is correct.

Examiner Wrenn: Let us take a five-minute recess.

(Short recess.)

Examiner Wrenn: Let us continue.

Mr. Kennedy: May I raise this point on the record?

Examiner Wrenn: All right.

Mr. Kennedy: As I have informally advised counsel for Western, if it appears on the basis of a canvass of counsel that we can finish with Mr. Kelly, I am willing to stay until five [2472] or such later time as the Examiner thinks is reasonable; but if it appears that there is going to be such extensive cross-examination that we can't finish tonight, I could be drafting a brief that is due on Friday, if we can adjourn early, it would help if I could get away. I would take second place on that to Mr. Kelly who I realize has to get back to LA. If we can't finish with him, I would like to adjourn early.

Mr. Renda: We would like to try to finish tonight if we possibly can, within reason.

(Testimony of Arthur F. Kelly.)

Mr. Kennedy: As far as I am concerned, I don't believe I would have more than five minutes with Mr. Kelly.

Mr. Bennett: It is contemplated our examination will be extensive and as a consequence, I would prefer to adjourn early, if that is agreeable.

Examiner Wrenn: All right.

Mr. Renda: It is not going to exactly agreeable with me, but I am willing to comply with the Examiner's feeling.

Examiner Wrenn: I think Mr. Bennett is entitled to whatever time he feels is necessary to examine the witness. I don't feel I am in a position to rush him any on that. I don't feel we ought to stay here until seven or eight.

Mr. Bennett: It might be well to defer to Public Counsel if he has something he has to get out of the way.

Mr. Kennedy: I don't want to suggest this if it will inconvenience anybody. If we can finish him, I will be glad to stay. If we can't, I would like to adjourn early.

Mr. Bennett: I don't like to stay late.

Examiner Wrenn: Go ahead.

Q. (By Mr. Renda): Would you turn to W-18, which consists of pages 1 through 12? You will notice those are a series of letters written by Mr. Frank Eastman, Station Manager, to various employees. They are in the bound volume.

A. They are not in my copy.

Mr. Renda: Off the record.

(Discussion off the record.)

(Testimony of Arthur F. Kelly.)

Mr. Renda: Mr. Examiner, let the record show that I will furnish copies of that exhibit to Mr. Bennett or anyone else who doesn't have copies of them. But as I recall, that data was submitted subsequent to the time that the entire bound volume was mailed out.

Mr. Bennett: Our bound volume has missing Exhibits 17 and 18. It only goes through 16. There are no letters attached.

Mr. Renda: I am fairly certain that the material which is identified as Exhibit 17, page No. 1 and page No. 2, and Exhibit No. W-18, pages 1 through 12, were mailed out to the parties some time subsequent to the submission of the entire bound volume, which was in December or thereabouts of 1948. Do you happen to have that material, Mr. Kennedy?

Mr. Kennedy: It is in my bound volume and I think it is because it was put in. It was distributed after the bound volume. We received copies.

Mr. Renda: We will be more than glad to submit additional copies to those who do not have them. I am fairly certain we sent them out.

Examiner Wrenn: Are these they?

Mr. Renda: Yes.

May I proceed? [2474]

Examiner Wrenn: Go ahead.

Q. (By Mr. Renda): Do you have any comments to make with respect to those twelve letters?

A. These are all ground personnel at Denver. It is a letter from the Station Manager, Mr. Frank Eastman. I would just like to comment briefly on

(Testimony of Arthur F. Kelly.)

the first paragraph, "Due to the disposal of Route 68, it will not be necessary we maintain the Denver station," et cetera, et cetera, and so forth. At the end it says, "Please advise if you desire to exercise your seniority rights at another company station."

We acknowledge the fact that people were affected by the sale of Route 68. The question at issue is whether these people were adversely affected. In transposing people from other route sections they would be affected. How they were adversely affected, is a question. In the case of ground personnel, we did everything we could to see that they were able to exercise their seniority rights.

Q. Now will you please turn to the Brotherhood's BRC Exhibit B and Supplemental B? I refer to the Brotherhood's exhibits.

Off the record.

(Discussion off the record.)

Mr. Renda: Let us hold in abeyance Brotherhood Exhibit B and Supplemental B. Mr. Kelly, and I will invite your attention, instead, to UAW Exhibit 1. In this connection, Mr. Examiner, I would like to make a brief statement.

Examiner Wrenn: Go ahead. [2475]

Mr. Renda: I presume since UAW has not made an appearance in this case, and since they have the burden of proof and the burden of going forward with respect to their case, there is actually no responsibility on our part to meet their case as they

(Testimony of Arthur F. Kelly.)

represented it at the pre-hearing conference.

Examiner Wrenn: There are no exhibits in the record.

Mr. Renda: That is right, so we are going to forego any detail analysis, and will only ask one question.

Examiner Wrenn: Go ahead.

Q. (By Mr. Renda): I direct your attention to WR-7. Please tell us what that exhibit purports to show.

A. Exhibit No. WR-7 is an indication of the cut-back in general personnel classification under the maintenance classifications. I invite your attention to the first column, mechanics, as an example, with the total of all employees on December, 1946, Western Airlines had 242 mechanics.

In the fourth quarter of 1948, it was down to 178 mechanics, *ir*regardless of the fact that we had more airlines at that time to maintain.

Since that time, Western Airlines has taken over the complete responsibility for their engine overhaul. They no longer contract Pacific Airmotive. They have taken over the additional responsibility which would normally call for the employment of more employees. It is a constructive trend. It shows we are doing as much work with our mechanical division with almost a third of the personnel we had at previous times. [2476]

Examiner Wrenn: Mr. Renda, I didn't mean that there should be any limitation to what you want to say. The Board's order made the UAW a

(Testimony of Arthur F. Kelly.)

party. My only reference is to any documents they sent around to counsel. They are not marked for identification and they are not a part of the record.

You proceed with any material you have which relates to their interest.

Mr. Renda: We are going to limit it to one exhibit which is addressed to their particular phase of the case.

Q. (By Mr. Renda): Now, Mr. Kelly, will you please again return to the Brotherhood exhibit that I brought to your attention a short while ago, but which I did not question you on.

Mr. Renda: Mr. Examiner, I have here four letters, one written by Mr. Harold Toomer to Frank Eastman, dated September 24, 1947; one written by Mr. Kenneth D. Cassidy to Frank Eastman, dated September 23, 1947; and one written by Mr. Howard E. Moore to Frank Eastman, dated September 23rd; and one written by Ed C. McAndrews, Jr., to Western Airlines, attention Mr. Eastman, dated September 23rd.

I ask that these letters be marked Western Exhibits WX-2, 3, 4 and 5.

Examiner Wrenn: They will be so identified.

(Whereupon the documents referred to were marked for identification as Exhibits WX-2, 3, 4 and 5.)

Mr. Renda: If you recall on the cross-examination of Mr. McKinney, I raised several points about which there seemed to be differences of an opinion.

(Testimony of Arthur F. Kelly.)

I stated as part [2477] of my direct case I would introduce certain evidence. That is the purpose of this.

Examiner Wrenn: Yes.

Q. (By Mr. Renda): Mr. Kelly, I will ask you to examine WX-2 and tell us whether or not that is a true and correct copy of this letter which is from Harold Toomer to Frank Eastman, dated September 24th? A. Yes, it is.

Q. I will ask you to examine WX-3 and ask you to tell us whether that is a true and correct copy of a letter written by Mr. Cassidy to Frank Eastman, dated September 23rd? A. Yes, it is.

Q. Please examine WX-4 and I will ask you if that is a true and correct copy of a letter written by Mr. Frank Moore to Mr. Eastman, dated September 23rd? A. Yes, it is.

Q. Please examine WX-5 and I will ask you if that is a true and correct copy written by Mr. McAndrews, dated September 23rd?

A. Yes, it is.

Q. Now, Mr. Kelly, will you turn to ALPA Exhibit No. 1? A. Yes, sir.

Q. You will note that on pages 2, 3, 4, 5, 6 and 7 of that exhibit are set forth the names of certain pilots that the ALPA says were adversely affected and on which there has been considerable testimony in this case. Will you please state whether I have asked you to make an [2478] examination of the earnings during 1946, 1947 and 1948 of the different pilots set forth in Exhibit ALPA 1?

(Testimony of Arthur F. Kelly.)

A. Yes, you have.

Q. Do you have that information with you?

A. Yes, I do.

Q. Will you please refer to Mr. L. E. Warden.

Tell us what his earnings were in 1946.

A. \$3,591.46.

Q. 1947? A. \$4,165.74.

Q. 1948?

Mr. Bennett: Just a moment, please.

Examiner Wrenn: You will have to go more slowly. Counsel are trying to write the figures down.

Mr. Renda: To assist, I will distribute copies, but I want them read in the record.

Q. (By Mr. Renda): What was it in 1948?

A. \$5,087.96.

Q. Turn to E. W. Chapman. What were his earnings in 1946? A. \$7,596.77.

Q. 1947? A. \$6,233.93.

Q. 1948? A. \$6,645.41.

Q. Is there any special reason why his earnings in 1946 exceeded his earnings in 1947 and 1948?

A. Yes, in 1946 he was flying as a reserve captain. [2479] He was engaged in a pilot training program.

Q. When flying his pilot training program, is he assured of a bonus? A. Yes.

Q. Turn to Mr. Walter Hail. What were his earnings in 1946? A. \$6,568.46.

Mr. Bennett: From where you are getting these figures?

(Testimony of Arthur F. Kelly.)

Examiner Wrenn: Give him the source of the figures.

The Witness: My notes. We took them down from our payroll records.

Mr. Bennett: You now have them on notes before you?

The Witness: That is correct.

Mr. Renda: Would you like to examine the notes?

Examiner Wrenn: No.

Mr. Bennett: I am interested in the source. The figures from which you are reading are made from notes that you made from the payroll records?

The Witness: That is correct.

Examiner Wrenn: Go ahead.

Q. (By Mr. Renda): 1946 for Mr. Hail?

A. \$6,568.46.

Q. 1947? A. \$7,043.98.

Q. 1948? A. \$7,047.08.

Q. Turn to Mr. Frank Cole. What were his earnings in 1946? [2480] A. \$6,143.05.

Q. 1947? A. \$6,373.45.

Q. 1948? A. \$6,759.70.

Q. Turn to Mr. Walter Peters. What were his earnings in 1946? A. \$4,367.21.

Q. 1947? A. \$5,409.61.

Q. 1948? A. \$4,556.75.

Q. Was there any reason why his earnings in 1948 were less than they were in '46 and '47?

A. He had a two and a half month personal leave of absence.

(Testimony of Arthur F. Kelly.)

Q. Barchard. A. \$8,608.44.

Q. 1947? A. \$8,960.31.

Q. 1948? A. \$9,928.48.

Q. Let us turn to Mr. Holt. 1946?

A. \$7,707.63.

Q. 1947? A. \$8,326.29.

Q. 1948? A. \$8,082.27.

Q. Let us turn to Mr. Shesby on page 4; what were [2481] his earnings? A. \$9,760.76.

Q. 1947? A. \$11,096.20.

Q. 1948? A. \$10,903.30.

Q. Let us turn to Mr. Keller; what were his earnings in 1946? A. \$10,009.94.

Q. 1947? A. \$10,412.68.

Q. 1948? A. \$10,497.25.

Q. Let us turn to Mr. Young. What were his earnings in 1946? A. \$9,030.90.

Q. 1947? A. \$9,048.53.

Q. 1948? A. \$9,785.33.

Q. Turn to page 5, Mr. Claude Gray. What were his earnings in 1946? A. \$3,641.30.

Q. 1947? A. \$4,193.94.

Q. 1948? A. \$5,011.13.

Q. Let us turn to Mr. Conover.

A. \$9,928.95. [2482]

Q. 1947? A. \$10,232.40.

Q. 1948? A. \$10,685.70.

Q. Let us turn to Mr. Bailey.

A. \$8,697.74.

Q. 1947? A. \$8,906.61.

Q. 1948? A. \$9,411.58.

(Testimony of Arthur F. Kelly.)

Q. Was Mr. Bailey off in 1948 at any time?

A. No, my records don't show that he was.

Q. Let us turn to Mr. Keeley. What were his earnings for 1946? A. \$9,753.01.

Q. And in 1947? A. \$10,160.48.

Q. And '48? A. \$10,330.51.

Q. Now how about Mr. Schuster; what were his earnings in 1946? A. \$9,580.93.

Q. 1947? A. \$8,809.43.

Q. 1948? A. \$10,272.51.

Q. Was Mr. Schuster off in 1947?

A. Yes, Mr. Schuster had a three-week personnel leave of absence starting October 6, 1947. [2483]

Q. Turn to Mr. Ryan. What were his earnings in 1946? A. \$10,376.90.

Q. 1947? A. \$11,871.29.

Q. 1948? A. \$11,519.93.

Q. Turn to page 7. A. Yes.

Q. Mr. Fred Wahl; what were his earnings in 1946? A. \$9,954.80.

Q. 1947? A. \$11,862.88.

Q. 1948? A. \$11,256.68.

Q. And the last one, Mr. Floyd Aker; what were his earnings in 1946? A. \$10,342.27.

Q. 1947? A. \$12,596.62.

Q. 1948? A. \$12,076.63.

Mr. Renda: Mr. Examiner, that concludes Western's case.

Examiner Wrenn: Mr. Bennett, you may begin your examination of the witness.

Mr. Bennett: It is 4:30. I was under the im-

(Testimony of Arthur F. Kelly.)

pression we were going to adjourn early. I would prefer to defer any examination until the morning, if I may.

Examiner Wrenn: What time did you want to adjourn?

Mr. Kennedy: If we could adjourn now, it would be a [2484] help. I am willing to stay.

Examiner Wrenn: Off the record.

(Discussion off the record.)

Examiner Wrenn: Mr. Crawford, you may proceed.

In the off-the-record discussion we discussed the problem of cross-examination and we are switching the order. The Brotherhood is going to go ahead and Public Counsel.

Cross-Examination

By Mr. Crawford:

Q. Referring to the four letters introduced into evidence by Mr. Renda, written by the employees Moore, Cassidy, and so forth, have you those before you? A. Yes, I have.

Q. Take the one from Mr. Toomer to Mr. Eastman. A. Yes.

Q. Referring to your Exhibit 18, page 4, which is a copy of the letter written by— A. 18?

Q. Yes.

That is a letter written by Frank Eastman, your Station Manager, to Mr. Toomer, dated September 9th. I am not going to read the letter. It was with reference to the subject of Route 68, and he would be furloughed effective midnight September 14th.

(Testimony of Arthur F. Kelly.)

I checked your Exhibit 3, pages 13 to 23, which shows that he was furloughed on that date, September 14, 1947. The fact is that this letter is dated September 24th, where he declined to go to Casper, but there is a lapse of time, although that is one you show 14, we only claim 18, but in either event there was a space of time between the [2485] date he was actually furloughed until he was offered a move and declined it. A. That is correct.

Q. Was he paid for any time lost between?

A. I don't think he was, and I don't think any claim was made for it, Mr. Crawford.

Q. Would that apply to all of them, to shorten time, Mr. Cassidy, Mr. McAndrews and Mr. Moore? I have checked those letters. Eastman notified them they would be furloughed as of September 14th. I have checked your Exhibit 3 and the pages.

A. I am familiar with the individual.

Q. It shows that they were furloughed on the dates on which you notified they would be. Under the same proposition of the dates of their letter, there would be a space of time between the time they were furloughed until they did decline to take employment.

A. That is correct. In the case of Mr. Toomer, in the time that elapsed, he was considering whether he wanted to go to Casper.

Q. There was a space of time in which he lost time by reason of the furlough up until the time he was offered a position. None of these employees coming under that category have been paid for that

(Testimony of Arthur F. Kelly.)

time off? A. That is correct.

Mr. Renda: So that record may be straight. There is no dispute as to that. These letters were offered to show that there had been an offer of position perhaps elsewhere on such and such a date. The employee may have waited a while before he accepted it. [2486]

Mr. Crawford: I thought it would be best to show that space of time.

Examiner Wrenn: Yes.

Q. (By Mr. Crawford): I understood you to say that you didn't think the Burlington formula was applicable to the airline industry and it was your suggestion that some suggested formula, particularly for the airlines, should be made. Didn't the Board give you an opportunity to make a suggestion as to the formula you might think would be applicable to the airline industry in this particular case? A. Yes, they did.

Q. I am referring to the time we had two conferences in L. A., of which Mr. McKinney spoke. I understand you declined to consider suggesting any formula, but insisted that we sit down and go over employees one by one; is that correct?

A. Before I want to discuss a solution or formula, I want to know the extent of my liability. I think that is a good business practice. Before you establish a formula, you have to know what your liability is going to be.

Q. Have you subsequently offered any suggested formula which you think might be applicable?

A. No, it wasn't until this case presented it. It

(Testimony of Arthur F. Kelly.)

was only a case of people who were allegedly affected.

Q. The only formula you have is the policy you read into the record?

A. That is an example of some of the practices which [2487] we have that are in turn incorporated in the so-called Burlington formula.

Q. Do I understand your suggestion to carry this inference: You believe the airlines should sit down and agree to a formula that might be applicable to the airline industry similar to what has been done by the American Association of Railroads, like the Washington Job Agreement?

A. In this case we don't feel there is an application for our so-called formula. We think down the road when the airlines are more or less stable and out of their growing stages and they are as stable as railroads, the airline should sit down and work out an intelligent procedure.

Q. The reason I ask that question is that I think you said a Burlington formula might establish a precedent which might be detrimental to the future. Did you have in mind a suggestion that the airlines confer on that like the railroads did and later came to agreement on the Washington Job Agreement and get a formula which would fit the industry as a whole?

A. A formula is dangerous to the strong, constructive growth of the airlines at this time, not only externally but internally. If they are considered consolidations, they are going to be hamstrung by formulas in effecting transfers. You don't know

(Testimony of Arthur F. Kelly.)

where formulas of this type stop. It could be a precedent for a schedule cut-back. There isn't much difference between the sale of a route or a seasonal decline in business, or a schedule cut-back. Whenever it happens, it affects employees involuntarily and then you want a standard formula practice to take care of them. I say this is [2488] not the time to apply this type of formula to the industry. I think the basic effect is an unwarranted employment insurance.

One of the risks in working for the airline business—this business isn't new. I worked in the airline business when United was buying Western in 1939 and '40. I was one of those guys that you are talking about that was sitting there thinking at times about what was going to happen to me. I felt if I have had the qualifications to come up to the standards of the purchasing company, I would make a go of it. I didn't want anybody exploiting my unemployment insurance or giving me charity because of my position.

Q. That was your personal view.

A. That is right.

Q. You realize that as time goes on, there will probably be many mergers and consolidations and so forth in this industry. Did you have in mind suggesting some formula applicable to the over-all proposition? If not, that is all I want to know. Do you think you should apply a formula to each particular case?

A. No, I haven't given it the thought that a lot

(Testimony of Arthur F. Kelly.)

of these people like Mr. Kennedy has given it. I have specific Western Air problems to take up my time.

Examiner Wrenn: Do you have any questions of this witness?

Mr. Reilly: No questions.

Cross-Examination

By Mr. Kennedy:

Q. Under the column "Reason," W-3, opposite the name [2489] of Mr. Seveik, and then opposite the name of several other people on the page, you have the word "Furlough." A. Correct.

Q. What is the explanation of that? That isn't the reason. That is just a fact.

A. You mean the sale of Route 68?

Q. No, above that. A. Furlough?

Q. Yes. A. Yes.

Q. You just say these gentlemen were furloughed and you don't explain why.

The request for evidence asked for a reason. In most other cases you have given a reason. But beginning on page 21, I think there are some 100 cases involved and you didn't give any explanation.

A. It was the general personnel cut-back without any external forces.

Q. In a number of places, you have "Reduction in staff" or "Reduction in force." Wouldn't that be the personnel cut-back you were talking about?

A. Possibly.

Q. It would be natural if that were the explana-

(Testimony of Arthur F. Kelly.)

tion to have used those words rather than the word "furlough."

A. These were taken from copies of individual station supervisors who have their own definitions. These are the words we took from the personnel records.

Q. Your answer is that you don't know what the explanation is? [2490]

A. I know the explanation why there is a change in the various reasons and classifications. I know that individual supervisors will come in on a personnel record and have their own interpretation as to why a person severed his job or why he is furloughed or why he is terminated.

Q. Do you know what the word "furlough" means here?

A. There is a slight difference between terminate or furlough. If a man is fired for cause or reason he is usually terminated. If a man has worked and is subject to seasonal cut-backs, we put him on a furlough status.

Q. I am clear as to that. That explains the distinction between a furlough and termination. What was the reason for the furlough, if you know?

A. I say the reason for the furlough, in my opinion, is general seasonal cut-backs, the normal personnel cut-back that was going on at that time.

Q. You can say of your knowledge Mr. Seveik was cut back because of general seasonal cut-backs?

A. I would say so, yes.

Q. And you can say the same thing of each of the 100 odd cases in addition?

(Testimony of Arthur F. Kelly.)

A. I would say it was a normal personnel cut-back, yes.

Q. And you say that of your own knowledge as to each case?

A. Not for each case. I say that is a matter of general company policy of personnel cut-backs at that time.

Q. Suppose the Board would decide that a Burlington formula or something along that general line was appropriate [2491] for the benefit of Western employees, do you have any thought who should bear the liability under that formula, whether it should be Western or United or divided between them?

A. I think I made my position clear on that; if the Board attached a so-called formula, Western Airlines, as far as their liabilities were concerned, would defer payment until such time as we were able to recapture it.

Q. Suppose the Burlington formula were imposed. On whom should the Board impose liability, Western or United or both of them?

A. I don't have an opinion on that.

Mr. Kennedy: That is all I have, Mr. Examiner.

Examiner Wrenn: Let us recess until 9:30 o'clock tomorrow morning. We will be in Room 5132.

(Whereupon at 4:40 p.m. the hearing was adjourned to reconvene on Thursday, November 17, 1949, at 9:30 a.m.) [2492]

(Testimony of Arthur F. Kelly.)

Proceedings November 17, 1949

Examiner Wrenn: Mr. Bennett, you may cross-examine the witness.

Whereupon

ARTHUR F. KELLY

was recalled as a witness on behalf of Western Airlines, Inc., and having been previously duly sworn, was examined, and testified further as follows:

Cross-Examination

By Mr. Bennett:

Q. What capacity did you say you were working in? A. At the present time?

Q. Yes. A. I am vice president—traffic.

Q. Previous to that, what title did you hold?

A. Executive assistant to the president.

Q. And previous to that?

A. General traffic manager.

Q. And your employment extends over what period of time, your whole employment?

A. In aviation?

Q. Yes; with Western Airlines.

A. Since 1946.

Q. I call your attention to W-1, pages 1 and 2. Did you prepare those documents?

A. These documents were prepared at the request of Public Counsel, and the information was prepared in our Accounting Department.

Q. Now, would you answer my question, [2497] please?

(Testimony of Arthur F. Kelly.)

Mr. Renda: If Mr. Bennett has any objection with respect to the balance sheet and wants to move to strike, let him make his motion. That is a consolidated balance sheet taken from our records as of September, 1948.

Examiner Wrenn: Read the question.

(Question read.)

The Witness: No, I did not prepare this document. I got it from my Accounting Department.

Q. (By Mr. Bennett): Are you sponsoring these two documents?

Mr. Renda: I think Mr. Bennett knows the witness is sponsoring that. The witness so testified on direct examination. There is no question about it.

Examiner Wrenn: Let him answer.

The Witness: I am sponsoring these exhibits. They were prepared at the request of Public Counsel.

Q. (By Mr. Bennett): You are sponsoring pages 1 and 2 of W-1? A. That is correct.

Q. Will you turn to pages 1 and 2 of W-2? Were those two documents prepared by you?

A. They were not actually prepared by me, no.

Q. But you are prepared to sponsor them, are you not?

A. I think they speak for themselves.

Q. Would you answer my question, please?

A. In general, I am prepared to sponsor these exhibits.

Q. I call your attention to the item of flight operation on page 2 of Exhibit W-2.

(Testimony of Arthur F. Kelly.)

A. Is that "flying operations"? [2498]

Q. Yes; operating expense. There is the item of flying operation. Does that item include the expense of pilot salaries? A. That is correct.

Q. How much of that is pilot salaries?

Mr. Renda: Mr. Examiner, I am going to object to this line of questioning with respect to this exhibit. This is a statement of profit and loss sponsored by this witness. It is being submitted pursuant to a request by Public Counsel. I do not see how cross-examination on a profit and loss statement is germane to the issues before us in this proceeding.

Mr. Bennett: Do you wish me to answer?

Examiner Wrenn: If you like.

Mr. Bennett: I think I have a right to ascertain the witness' qualifications by examining him upon any part of this exhibit. If he does not know, he can say as much. To test his knowledge of this exhibit I have a right to question him upon it.

Examiner Wrenn: Go ahead.

Mr. Renda: Let the record show with respect to exhibit 1 and Exhibit 2, the balance sheet and profit and loss statement, we would have no objection to withdrawing, to withdrawing those two exhibits. They are only in here because they were requested by Public Counsel.

Q. (By Mr. Bennett): Can you tell us what portion of that flight operation figure is "pilot salary"?

A. Generally speaking, a salary expense can be

(Testimony of Arthur F. Kelly.)

broken [2499] down in proportion to the system as a whole, and I would say that compared with overhead that would probably run around forty-five or fifty per cent of that.

Q. Thirty per cent of which figure would be the pilots' salary?

A. The consolidated figure. I am taking the figure of fifty per cent at the representative figure of what salaries as a whole for the company represent. Whether that applies specifically to that figure, I do not know. I am speaking of the company as a whole. Salaries represent about fifty per cent of our operating overhead. It might be pointed out in that particular item, the item of gas-line and oil and general expenditure of operating aircraft, might take that out of the proportionate percentage.

Q. What other airlines are comparable to Western Airlines?

Examiner Wrenn: Give him a little more indication of what you have in mind when you say "comparable."

Q. (By Mr. Bennett): There was some indication yesterday in the hearing that there were other airlines, certificated airlines, domestic airlines, that if any comparison was going to be made of Western should be made of these other comparable airlines. Are there domestic airlines in the United States that are comparable to Western?

Mr. Renda: I object unless he states in his question on what basis he wants to make the comparison.

(Testimony of Arthur F. Kelly.)

Q. (By Mr. Bennett): If you know. [2500]

Mr. Reilly: I object. The testimony that was elicited with respect to comparisons was to test the knowledge of the witness Unterberger, to test his knowledge of the airline industry.

Examiner Wrenn: Make the question more specific.

Q. (By Mr. Bennett): Let us take it in revenue miles first. Are there other domestic commercial airlines that are comparable?

A. Of course there are. Anyone that works in the industry knows that "comparable airlines" is merely a trade name. As soon as "comparable" is used, they immediately think of certain blocks of airlines. You have your Big Four, your medium-sized carriers and your small-sized carriers. In your comparable group you might include Mid-Continent, Delta and Chicago & Southern as an example of comparable carriers. That would extend from a period of several years. That would go from 1946 to 1949. For an example, Delta might step out. "Comparable" is a well-known trade term that anyone working in the business knows.

Q. What carriers are comparable to Western upon the basis which you indicated?

Mr. Renda: I object.

Mr. Reilly: I object to any questions along this line because I do not see any relevance as far as this witness' testimony in this case is concerned. How could any answer go to the issue of whether

(Testimony of Arthur F. Kelly.)

any pilots were adversely affected by the transaction here involved?

Mr. Bennett: I want to make certain he is through with his objection. [2501]

Mr. Renda: I have not made my statement yet.

Mr. Bennett: I would like them to get through.

Examiner Wrenn: I have told you to go ahead.

Mr. Bennett: Mr. Kelly has indicated that he is sponsoring this exhibit. He indicated he has been in the industry for many years. I think I have a right to test his knowledge of the industry by such questions.

Examiner Wrenn: Are you merely testing his qualifications?

Mr. Bennett: That is right.

Examiner Wrenn: Go ahead.

Mr. Bennett: Read the question.

(Question read.)

Mr. Renda: I object on the ground that the question is not specific. He should set forth the basis.

Examiner Wrenn: Make your question specific.

Q. (By Mr. Bennett): Upon the basis you indicated in your answer a few moments ago, will you tell us what other domestic commercial airlines are comparable to Western?

Mr. Renda: I object. If counsel cannot set forth the basis he wants, he can withdraw it.

Examiner Wrenn: Make your question specific and I will direct him to answer it.

(Testimony of Arthur F. Kelly.)

Q. (By Mr. Bennett): I believe you testified yesterday, Mr. Kelly, that no pilots on Western Airlines were adversely affected by the sale of Route 68; is that right?

A. That is correct. [2502]

Q. If you were discharged or furloughed from your job today, would you consider yourself adversely affected?

A. It would depend on whether it was voluntary or involuntary.

Examiner Wrenn: Read the question.

(Question read.)

Q. (By Mr. Bennett): Would you answer, please?

A. Sometimes in the airline business a lot of people think it would be a good idea if you went out and got a job which was more remunerative.

Q. Will you answer my question?

A. That is my answer.

Q. Would you answer my question Yes or No? Would you consider yourself adversely affected if you were furloughed from your job or discharged today?

A. If I had a job that paid me \$3,000 a year more than I am making now, could I consider myself adversely affected? That is the basis of my answer.

Mr. Bennett: I do not want to argue with the witness. May he be directed to answer my question?

Mr. Renda: He does not have to answer Yes or No. He can qualify it.

(Testimony of Arthur F. Kelly.)

Examiner Wrenn: Answer the question to the best of your ability.

The Witness: In my position in the aviation business, not having any other place to go, I would consider myself adversely affected. [2503]

Q. (By Mr. Bennett): Did you hear Mr. Horne testify that he was demoted from Reserve Captain to Co-pilot? A. I think that is correct.

Q. Do you remember his testifying that he was so demoted because two of the pilots from Route 68 moved into his base and by reason of their seniority he was pushed back or demoted to Co-pilot?

A. Yes; and I was extremely puzzled about it. I was puzzled because——

Q. That is enough.

Mr. Renda: You asked him a question; let him answer.

Mr. Bennett: I do not want him to make a speech.

Mr. Renda: If that is responsive, the witness can continue.

Q. (By Mr. Bennett): Do you think Mr. Horne was adversely affected?

A. My reaction is that I was puzzled. At the time he made that statement——

Mr. Bennett: I did not ask that. I do not care if he was puzzled.

Examiner Wrenn: Let him finish his statement.

Mr. Bennett: I do not think that the witness should be permitted to make a speech every time he has a question put to him. I only want an answer.

Examiner Wrenn: I am going to get you an

(Testimony of Arthur F. Kelly.)

answer, Mr. Bennett, if you will let me.

Mr. Bennett: Read the question.

(Question read.)

Examiner Wrenn: Do you regard Mr. Horne was adversely [2504] affected?

The Witness: At the time he made that statement I was extremely puzzled because, being familiar with the schedule cut-backs, namely, one schedule off between Billings and Great Falls, and around that time between Rapid City and Sheridan, I would assume that would have some effect. Because of schedule cut-backs he probably was adversely affected.

Mr. Bennett: Then your answer was, he was adversely affected?

Mr. Renda: I think he has answered it.

Examiner Wrenn: Read the last statement.

(Answer read.)

Q. (By Mr. Bennett): I think you read from some notes yesterday the earnings of some twenty-odd pilots. Have you those notes with you?

A. I think I have.

Q. Do those notes disclose the earnings of Mr. Horne?

A. No. We had no record of Mr. Horne in your exhibits, so we made no study of it.

Q. Were the notes from which you read those earnings made by yourself?

A. In conjunction with our Accounting Department, yes.

(Testimony of Arthur F. Kelly.)

Q. Will you explain that, please, "In conjunction with the Accounting Department"?

A. I had to go there to solicit the help of our Accounting people to accumulate the salary information.

Q. Were the notes you read from accumulated by the Accounting Department or by [2505] yourself?

A. By me.

Q. Did you take them from the books of the company? A. That is correct.

Q. You made a notation of the amount?

A. That is correct.

Q. These notes that you are reading from are the memos you made from the Accounting Department books? A. That is correct.

Q. May I see them, please?

Mr. Renda: Just a minute, please. I have no objection to showing Mr. Bennett any figures he wants to see, but he is not going to see this man's notes.

I hate to have to do this. Here is Mr. Horn. Here is Mr. Hale. Here is Mr. Peterson.

Q. (By Mr. Bennett): Did you draw any conclusion from the figures that you read off to us yesterday?

A. I do not think I did. I think I just submitted the figures, that is all.

Q. Do you know what the purpose of submission of the figures would be?

A. Only to take the pilots that were selected

(Testimony of Arthur F. Kelly.)

by A.L.P.A. Exhibits who were adversely affected, and make a study and see if they were allegedly adversely affected.

Q. By the comparison of the annual earnings to see if they were in fact adversely affected?

A. We just wanted to find out if the A.L.P.A. was going to use a monetary yardstick. We wanted to know.

Q. Is that what the testimony showed, in your opinion? [2506]

Mr. Renda: I object. The testimony speaks for itself.

Examiner Wrenn: Certainly he has a right to find out what the witness is trying to prove by it. I am interested in knowing whether he wants the Board to believe that Western is saying here that the pilots were not adversely affected—if he can answer that. I do not want to put any words in his mouth.

Mr. Renda: I thought he answered that.

Examiner Wrenn: Is it Western's position that there is no conclusion to be drawn from it? If that is it, it is all right.

The Witness: We have been concerned as to the claims of A.L.P.A., as to whether people were adversely affected. If the monetary yardstick was going to be used, we took a list of the names of pilots A.L.P.A. selected that were adversely affected and drew that yardstick up to find out from a monetary if they were adversely affected. We only present these for the Board to look at and to consider.

(Testimony of Arthur F. Kelly.)

Examiner Wrenn: Is Western asking the Board to draw any particular conclusion?

The Witness: Certainly we are.

Examiner Wrenn: What is it?

The Witness: No pilots were affected by the sale of Route 68.

Examiner Wrenn: All right.

Q. (By Mr. Bennett): We have to start with earnings from Route 68?

A. No, I think you have to look at it from the standpoint of the entire system of Western Airlines. [2507]

Q. Which one of those figures, 1946, 1947 or 1948, represents the earnings of those pilots from Route 68?

A. Well, I think the pilots that were flying Route 68 that were in this exhibit. It is reflected in their total yearly salary.

Mr. Bennett: Read the question.

(Question read.)

The Witness: I did not go into any specific detailed study as to where this money was earned. I went into a study of what a pilot made for a given year to find out if he was adversely affected.

Q. Do you know what the issue is in this case, Mr. Kelly? A. I think I do.

Q. It is to ascertain if the sale of Route 68 adversely affected any pilots.

A. I think that is substantially correct.

(Testimony of Arthur F. Kelly.)

Examiner Wrenn: Let us be clear that that is the issue you are discussing.

Mr. Bennett: Yes.

Q. (By Mr. Bennett) These pilots about whose income you testified were pilots who were flying Route 68, is that correct?

A. I think they were.

Q. Basically, I take it the exhibit would seem to demonstrate that the earnings from Route 68 and the earnings afterwards were the same or more, is that true?

A. We just made a year to year study as to whether the pilot was adversely affected in flying the routes of Western Airlines. [2508]

Q. Which of the earnings represent the pilots earnings from Route 68?

A. I have not made that detailed study.

Q. You do not know? A. No.

Q. None of these pilots flew the entire year of 1947 on Route 68?

A. No. The route was transferred on September 15.

Q. So that the 1947 earning would not represent earnings for the year 1947 from that route, is that true?

A. That is substantially correct.

Q. So that there is not any basis of comparison between these figures as to what they earned on 68 or some other route? A. That is true.

Q. Did the earnings of these individuals in 1948 also include increases in compensation?

(Testimony of Arthur F. Kelly.)

A. The general scope of salary, I think, yes.

Q. Do you know that they were increased?

A. I think this reflects a general adjustment that might have been effected on their salary.

Q. What was the increase?

A. Do you mean in retroactive flying pay?

Q. Yes; the monthly increase of pilot compensation. What was the monthly increase in pilot compensation between 1947 and 1948?

A. It varied according to where the pilot was flying and what he was flying.

Q. Take the co-pilot. He gets a flat salary, does he not? [2509]

A. That is correct.

Q. What was his increase?

Mr. Renda: The contract is stipulated. It speaks for itself.

The Witness: I will read it out of the contract. I have a copy of the contract.

Examiner Wrenn: Go ahead.

Mr. Bennett: I do not think the contract will show the increase. It will only show the salary.

The Witness: Here is the minimum pay for co-pilots. Do you want me to read from the first to the fifth year?

Q. (By Mr. Bennett): I want to know the increase.

A. The first six months \$285. Second, \$305 per month on up to the fifth year, to the tenth six month, \$500 per month.

Examiner Wrenn: How much of an increase is that over what they had?

(Testimony of Arthur F. Kelly.)

The Witness: I do not know. All I know is what the salaries were in these contracts.

Q. (By Mr. Bennett): What were the salaries in 1947?

A. I am not familiar with that figure.

Q. Have you got a contract for 1947?

Examiner Wrenn: I am perfectly willing to let you bring that in through your witness. The witness testified he did not know.

Q. (By Mr. Bennett): You do not [2510] know? A. No.

Mr. Bennett: I will withdraw the question.

Examiner Wrenn: You can let it stand.

What do you want to do?

Mr. Bennett: Let it stand. He does not know.

Q. (By Mr. Bennett): Mr. Kelly, you indicated in your testimony yesterday that when Mr. Drinkwater assumed the presidency of Western Airlines that Western Airlines was overstaffed. I believe you said as much.

A. I think that was an understatement.

Q. Beginning in 1946 there was a steadily reduced employment?

A. I said at the end of 1946.

Q. Yes. You said that trend has continued. Is that right? A. That is correct.

Q. Would that statement hold true of the airline pilot personnel of Western Airlines together with the other employees?

A. Not quite to the degree that the other classifications were reduced.

(Testimony of Arthur F. Kelly.)

Q. To what degree was Western overstaffed in pilot employees?

A. I could not answer that question without getting into a more complete study.

Q. You do not know? A. No.

Q. I think you also testified that Western Airlines [2511] had an annual fluctuation of employment? A. Seasonal fluctuation.

Q. It is also annual, is it not?

A. That is correct.

Q. This fluctuation was a normal thing, is that true? A. Fairly normal.

Q. I think you also stated that you had a normal cut-back season? A. Up to 1948, yes.

Q. What is a normal cut-back in pilots annually or seasonally?

A. As I recall, it depends on how many schedules you are flying and how many you cut off. In 1946, as I recall it, we furloughed in the winter about 45 pilots. In the fall and winter of 1947 we furloughed about twenty-one pilots. We furloughed about the same number in the fall of 1948.

Q. As I understand your answer, there were one hundred per cent more pilots furloughed in 1946 than there were in 1947?

A. I think that figure is substantially correct.

Q. So that when you say there is a normal cut-back annually, that is not exactly what you mean?

A. No. It depends upon the scope of your operations. If you take off ten schedules, you are going to take off more pilots. If you take off five schedules, you take off fewer pilots.

(Testimony of Arthur F. Kelly.)

Q. It differs from year to year, is that correct?

A. That is correct.

Q. So there is no normal cut-back. The only normal [2512] thing is that there is a cut-back annually?

A. Yes. It might be in a different month each year. It depends on business.

Q. In any event, there is no normal number annually? A. No exact number, no.

Q. Will you look at your Exhibit WA-1, please?

A. Yes.

Q. I direct your attention to Mr. Babcock who is the first pilot employee named on that exhibit. Will you tell us why he was furloughed, please?

Mr. Renda: I object. I would appreciate it if Mr. Bennett would say furloughed on what date.

Mr. Bennett: I will withdraw the question.

Examiner Wrenn: Very well.

Q. (By Mr. Bennett): I direct your attention to the remarks after M. M. Babcock. Mr. Babcock was a pilot, was he not?

A. That is correct.

Q. The remarks following his name say, "furloughed 9/22/48, Convair Program complete, scheduled reduction." Do you know whether he was furloughed because of schedule reduction or because the Convair Program was complete?

A. He would have been furloughed because of schedule cut-backs if we did not have the Convair Training Program.

Q. But you had it.

(Testimony of Arthur F. Kelly.)

A. That is correct. In the fall of 1948 we had the Convair Training Program.

Q. He was actually furloughed because the program was complete? [2513] A. Yes.

Q. That is not a seasonal cut-back, is it?

A. That is a temporary operational phase of our business. If we hired him to fly charter or extra section or something temporary in nature, it would not be a permanent job. If the seasonal fluctuation was going to affect him, he would not have a job.

Examiner Wrenn: Read the question.

(Question read.)

Mr. Renda: I believe he has answered.

Examiner Wrenn: What was his answer?

Mr. Bennett: He would say one or the other.

Mr. Renda: May I have the answer?

(Answer read.)

Examiner Wrenn: Was it because of the Convair Program or because of a schedule reduction?

The Witness: At this time, I would say because of the Convair Training Program.

Q. (By Mr. Bennett): That is not a seasonal reduction? A. No.

Q. Take the next one, Mr. Howard Critchell. The remark says, "Furlough, Completion of Convair Training Program 8/31/48, rehired 9/1/48 as new crew schedule——" That furlough was not a seasonal cut-back, is that true?

(Testimony of Arthur F. Kelly.)

A. That is correct. He finished his Convair Training Program.

Q. Now, Mr. Edgerton. I call your attention to his furlough on August 31, 1948. That was not a seasonal cut-back? [2514]

A. He was temporarily hired in the Convair Training Program.

Q. The same is true with Mr. Fitzgerald, he was terminated? A. That is correct.

Q. Mr. Allen Funkey, who was furloughed August 31, 1948. That was due to Convair completion?

A. Due to the Convair Training Program.

Q. That was not a seasonal cut-back?

A. No.

Q. Mr. Robert Hippe, he was furloughed on August 31, 1948. That same thing is true as to him?

A. He was furloughed after the temporary Convair Training Program.

Q. Yes. Let us turn to W. R.-2, if you please. Can you tell us why July 6 was chosen for a comparison? I am not sure whether or not you answered it. I would like to have you answer again because I do not remember.

A. In our informal conference with the Board on this subject, this was the figure that A.L.P.A. stated was a normal operating month. We do not agree that that was a normal operating month for the system.

(Testimony of Arthur F. Kelly.)

Q. What month would you choose as being normal?

A. It is difficult to actually select a normal month. In July you are in the peak of your summer business. It is difficult to select a typical normal month. For comparative purposes we would use it.

Q. Do you think July is fair?

A. No, I think it is above average. [2515]

Q. Which month would you choose to be fair?

A. Normally I would consider the first fifteen days of May and the first days of June. In the past year, 1949, June was substantially over July so far as traffic generally was concerned. It was an unusual year. It was difficult to forecast.

Q. If the period that you indicate was taken, can you tell us if the aircraft miles flown in 1948 would not also indicate a substantial reduction?

A. I have not made a study of that.

Q. You mean you do not know?

Mr. Renda: He has not answered the question.

The Witness: Yes; at the time.

Q. (By Mr. Bennett): I show you our Exhibit No. 2, which indicated the aircraft miles flown for May and June, 1947, and May and June of 1948. I ask you to state if it does not show a substantial reduction?

A. Yes, I think this shows a substantial reduction, but I would like to make mention of the fact that I have not examined this study on statistics and I have not my slip stick here to work

(Testimony of Arthur F. Kelly.)

out any rebuttal answers, but I might add this to my answer and that is, while in May and June of 1947 we were flying more aircraft miles than we were in 1948, we were losing substantially more money.

Q. Have you anything with which you could substantiate that statement?

A. I think if you start back with 1946 it was well over \$1,000,000. Through 1947 our operating loss was \$975,000 [2516] and in 1948 when our operating profit was about \$150,000—It seem during 1946 and 1947, with costs the way they were, the more money we were losing. It was a matter of reducing our cost and solidifying our operation and making it stable.

Q. The less miles you fly, the less pilots you need, is that true?

A. I think that is a fair statement.

Q. When the mileage flown is substantially reduced, it is necessary in the interest of economy for the company to furlough from the seniority list?

A. That is correct.

Q. In that case, Mr. Kelly, would you not say that the pilots furloughed are adversely affected?

A. Well, that depends upon why they were furloughed.

Q. You mean if a man loses his job, the fact would affect whether or not he was adversely affected?

A. I don't think substantially. In answer to your question, you have to examine why the man was furloughed.

(Testimony of Arthur F. Kelly.)

Q. Assume a man is furloughed because the company reduces its schedules and he does not draw his pay any longer. Would you say then he is adversely affected?

A. I would say he would be adversely affected on that basis. I would say he was affected on that basis.

Q. You would not say he was adversely affected?

A. Yes, he would be adversely affected.

Q. Whatever the reason, Mr. Kelly, if a man loses his job so his pay stops, do you not think he is adversely affected?

A. Yes, I think that is a fair statement.

Q. I believe you also stated yesterday that you had [2517] made a study or survey which convinced you that Route 68 would support but two schedules, is that true?

A. I would have to go into some more detail on that.

Q. Will you do that, then?

A. I was scheduling our aircraft in July of 1947. I mean in the spring and summer of 1947. I received a directive from our management in the scheduling of our aircraft that several factors would be considered. One was the fact that there were——

Q. Pardon me. I hate to interrupt you, but did you say that you had received orders from some department that several factors would be considered?

A. That is correct.

(Testimony of Arthur F. Kelly.)

In my future course of action in the scheduling of our aircraft, to schedule them according to my best judgment—One, we were getting ready to start the San Francisco-Seattle operation on August 1st.

Second, a very careful reading on the load factors would be carried through from August through the fall of 1947.

Third, because of the precarious financial position of Western Airlines at that time, I would be required to study the utilization of that aircraft pointed toward the possibility of selling some of that aircraft to meet some of the pressing debts of Western Airlines at that time.

The fourth factor was that I would consider this a normal operation assuming the fact that we were not going to sell Route 68.

Approximately at that time there was a considerable difference of opinion within our own company as to [2518] whether the sale of Route 68 was actually going to be approved. There was a substantial amount of difference of opinion as to whether it was. So my job in the scheduling of aircraft was one of a certain degree of normalcy that I welcomed in my future course of action in scheduling our aircraft. On August 1, although load factors were high on Route 68, going through the fall on a fairly permanent schedule, it was my opinion, borne out further down the line as the load factor started to slip, and as we were faced in August with one of the worst airline tragedies in history, the Bryce Canyon accident, which later

(Testimony of Arthur F. Kelly.)

proved detrimental to load factors that fall, the pattern of three trips from Los Angeles-San Francisco to Seattle was set up—nine trips including the Seattle-Los Angeles segment and two trips were set up on the Los Angeles-Denver segment. We were starting to feel some penetration as far as the non-stop operation of United was concerned. That generally was the problem which was given to me in the summer of 1947.

Q. I think you stated yesterday that you evaluated certain factors and came to the conclusion that 68 would support about two trips. Is that your testimony?

A. That is correct. I think that was fairly well borne out by United's operation the following summer when they were flying two trips.

Q. How many trips are being flown today?

A. Three trips.

Q. And one cargo trip? A. Yes.

Q. So that there are four trips flown? [2519]

A. If you want to consider that a Los Angeles-Denver run, you can, but it is a Los Angeles-Denver, Chicago, New York run.

Q. You say you came to this conclusion in 1947?

A. No. We have to set up schedules sometimes twenty-five days in advance.

Q. So it was previous to that time?

A. It was in July.

Q. During the time that you were contemplating all these factors, there were four trips being flown on 68? A. That is correct.

(Testimony of Arthur F. Kelly.)

Q. Is it not true that two planes which were making two trips on 68 were moved over to 63 on the extension? A. That is correct.

Q. We have information that indicates that there were people who were not able to fly on 68 because there was no seat for them. Are you aware of that factor?

A. Yes. During August that same problem existed between Los Angeles and San Francisco.

Q. Do you know how many passengers you turned down after you took those two trips off?

A. No; I do not have a record of that.

Q. You know that there were some?

A. We have a high density segment involved between Los Angeles and Las Vegas. We used one of our non-stops as a flag stop, flagging the non-stop into Las Vegas to take care of the local Los Angeles-Las Vegas passengers.

Q. You say that one of the factors you took into consideration was the accident that occurred in Bryce Canyon? [2520]

A. That was one of the factors that affected load factors. I think that accident happened sometime in August. But it had a general effect on our fall business.

Q. If I told you it happened in October, could that be correct?

A. Possibly. It happened generally around the fall season.

Q. It was after you sold Route 68 that that occurred?

(Testimony of Arthur F. Kelly.)

A. I do not have the exact date. I remember it had an affect on our fall business.

Q. Did you consider that accident?

A. No; just in future load factors. I was not sure I remembered what time in the fall this accident affected fall business.

Q. Did you not state at some stage along the line you took the Bryce Canyon accident into consideration in your dealing with Route 68?

Mr. Renda: I object.

The Witness: No.

Examiner Wrenn: Wait a minute. I want to get the basis of Mr. Renda's objection.

Mr. Renda: On his cross, that is not one of the things Mr. Kelly said he took into consideration.

The Witness: No, I did not take it into consideration. I was enumerating various factors that had an effect. I recall this accident had a substantial effect on our load factor.

Q. (By Mr. Bennett): On 68? [2521]

A. No; on all the routes.

Q. That has nothing to do with 68?

A. No. Our wisdom of schedule cut-backs was accentuated as a whole by virtue of the business we lost on this accident.

Q. That was a happenstance?

A. Correct.

Q. Mr. Kelly, what were the average number of pilots that you had working from 1947, do you know?

A. No, I do not know.

(Testimony of Arthur F. Kelly.)

Q. Let us turn to your Exhibit W.P.-4.

Mr. Renda: We do not have a W.P.-4.

Mr. Bennett: W. R.-4.

Q. (By Mr. Bennett): What does that exhibit demonstrate, please?

A. I testified in my direct testimony that this demonstrates a seasonal fluctuation in our pilot requirements and our flying requirements.

Q. That is what the exhibit was presumed to show?

A. That is what I stated in my direct testimony.

Q. If an airline is engaged in a training program and they fly a large number of hours in training, those are non-revenue hours, is that correct?

A. That is correct.

Q. That requires additional pilots as though it were revenue hours? A. That is correct.

Q. 1946 was the year in which Western Airlines began operations on Route 68, is that true?

A. That is true. [2522]

Q. Is was necessary, I take it, to train pilots on that route, is that right?

A. That route; and keep pilots qualified for other routes, too.

Q. But that training program on Route 68 was not the usual training program, was it?

A. It was the same as our Convair Program.

Q. You did not carry on a Convair Training Program every year?

A. No, we do not carry on a C-4 Program every year.

(Testimony of Arthur F. Kelly.)

Q. What other training program did you have in 1946 besides the training for Route 68, that is, that was not the ordinary training program?

A. I think that the only major one that was going on.

Q. That was the only major one?

A. Yes.

Q. What major training program, if any, did you have in 1947?

A. I do not think we had any.

Q. What major training program did you have in 1948? A. The Convair.

Q. So that in both 1946 and 1948 you had major training programs?

A. I believe that is substantially correct.

Q. Let us look at Exhibit WR-4. Does it show how many pilots were employed in January of 1947?

A. I would estimate on this chart about 125.

Q. How many in January of 1948?

A. I would roughly estimate about 98. [2523]

Q. The number of pilots in January of 1948 was substantially lower than the number in January, 1947? A. That is correct.

Q. Let us take February, 1947. How many pilots were there? A. I would say about 121.

Q. How many were there in February of 1948?

A. I would say about the same, about 98.

Q. When you say "the same," you do not mean the same as 1947?

(Testimony of Arthur F. Kelly.)

A. No; the same as January, 1948.

Q. In other words, there were substantially fewer pilots? A. That is correct.

Q. What about March?

A. I would say—March of 1947?

Q. Yes.

A. I would estimate that as about 105.

Q. What about March of 1948?

A. About 96.

Q. How many were there in April, in 1947?

A. Probably 103.

Q. How many in 1948? A. About 95.

Q. How many were there in May, 1947?

A. 110 or 111.

Q. How many were there in May of 1948?

A. About 110.

Q. How many were there in June, 1947, and June, 1948? [2524]

A. June, 1947, about 117.

Q. Would you look at that—

Mr. Renda: Mr. Examiner, if it would help Mr. Bennett's case any, we will be more than glad to submit the data which will set forth exactly the number of pilots which were on in the months starting with 1946 through 1949.

Mr. Bennett: I think I have a right to conduct my examination in any way I see fit.

Examiner Wrenn: You do. Do you want that information?

Mr. Bennett: No.

Mr. Kennedy: I think it would be helpful.

(Testimony of Arthur F. Kelly.)

Mr. Bennett: It is right before us.

Mr. Renda: Then why are we going through all this?

Mr. Bennett: I want it specifically set forth, if I can.

Do you want to furnish that to Public Counsel?

Mr. Renda: I made the offer to the Examiner, if any of the parties want it. The best the witness can do is estimate. I can give you the specific numbers, if you want them.

Examiner Wrenn: Did you make a request for it, Mr. Kennedy?

Mr. Kennedy: Yes. I want the information for the record, not for myself.

Examiner Wrenn: Is there any objection by any party to that being furnished after the close of the hearing?

Mr. Bennett: I have no objection.

Examiner Wrenn: All right. Go ahead and furnish it at the same time, within fifteen days.

Mr. Renda: Any variances between our records and Mr. Kelly's guesses will speak for [2525] themselves.

Examiner Wrenn: Yes.

Mr. Bennett: The submission will be for the number of pilots on the pay roll by months for both 1947 and 1948.

Mr. Renda: And 1946.

Q. (By Mr. Bennett): Will you examine the chart from January through August, 1947, and 1948?
A. All right.

(Testimony of Arthur F. Kelly.)

Q. Calling your particular attention to those months, is it not true that in every one of those months in 1948 there were fewer pilots than there had been in 1947?

A. They look about the same.

Q. In every month there were fewer pilots?

A. Yes.

Examiner Wrenn: Does any other counsel have a question?

Mr. Kennedy: I have just one.

Examiner Wrenn: Proceed.

Cross-Examination

By Mr. Kennedy:

Q. What was the seating capacity of Western's DC-4 on Route 68?

A. Generally speaking, 44.

Q. Do you know the capacity of United's DC-6s on that route?

Mr. Reilly: Fifty.

The Witness: I was going to say approximately fifty.

Mr. Kennedy: That is all.

Mr. Reilly: May I ask one question of Mr. Kennedy? Has everyone signed the stipulation, Mr. Kennedy? [2526]

Mr. Kennedy: Yes.

Examiner Wrenn: I am interested in a remark you made in answer to a question by Mr. Bennett. Why do you think there was considerable differ-

(Testimony of Arthur F. Kelly.)

ence of opinion among the Board about whether the sale would be approved?

The Witness: I suppose that was hearsay. I meant there was considerable difference of opinion in our Board.

Examiner Wrenn: There had been no expression by the Board or the Examiner in the form of a tentative opinion?

The Witness: No.

Examiner Wrenn: There is one other point I would like to get clear. I understood your testimony to be that Western does not consider that there has been any adverse effect on the employees, but if the Board should find that they have been adversely affected and impose a condition on there, particularly in the form of monetary payment, that Western could not make any such payment until they came back here and presented the issue in a mail rate case. Am I correct?

The Witness: You are substantially correct in that.

Examiner Wrenn: Then in substance, wouldn't that amount to Western saying they would not make the payment, that it would be up to the Government to make it in the form of mail pay?

The Witness: The position we take on that is one of necessary consistency. At the present time the Post Office's position, as I understand it, is one where they are using the so-called profit of the sale of Route 68 as an off-set of our retroactive mail pay. It would be inconsistent for us not

(Testimony of Arthur F. Kelly.)

to take this as an issue before the Board and the Post Office [2527] Department.

Examiner Wrenn: Do you mean Western would want an adjustment of that item in dispute that you say the Post Office Department is insisting you offset? Is that the substance of your testimony?

The Witness: That is correct.

Examiner Wrenn: I did not get that impression. I do not know if the record is clear.

Mr. Renda: May I clear the record?

The Witness: Yes.

Mr. Renda: There is presently pending a mail rate proceeding covering a retroactive period of May 1, 1944, through December 31, 1948. In that proceeding the Board has issued a tentative statement of findings and conclusion, and one conclusion was that a profit on the sale of Route 68 was all revenue, therefore mail pay should be subtracted from it. If the Board prevails and that decision is final, it is our position that if any reimbursement should be made to any employees, it should be made for by the Government through subsidy, whereas on the other hand, if we are permitted to retain the profit on the sale, then any charges like income or anything else is an obligation of the carrier.

Examiner Wrenn: I was going to ask a question further about it, but I can see your position on it. I could not see what you had in mind.

(Testimony of Arthur F. Kelly.)

Are there any further questions of this witness before tendering him for redirect?

(No response.)

Examiner Wrenn: Proceed with [2528] redirect.

Redirect Examination

By Mr. Renda:

Q. With respect to your testimony as to the earnings of the various pilots which are named in ALPA Exhibit No. 1, is it the position of the company and your testimony that the earning information which you have testified to is conclusive proof that in a dollar and cents test, those pilots were not adversely affected by reason of the sale of the Route 68? A. That is correct.

Mr. Bennett: This is direct testimony.

Examiner Wrenn: It is redirect.

Mr. Bennett: I do not think he should make the statements and have the witness answer Yes or No. It is a leading question.

Examiner Wrenn: You are correct that it is leading, but of course that is not the only leading question that has been asked during this proceeding.

Mr. Bennett: If he wishes to be sworn and testify, that is one thing. He asks a question of about five minutes duration and the witness says Yes or No, and that is all that there is to it. I prefer to ask that Mr. Renda ask a question rather than

(Testimony of Arthur F. Kelly.)

make a statement and have the witness answer Yes or No. I would die trying to get a Yes or No answer, and he does not have any trouble.

Mr. Renda: I will try to ask questions which conform to the rules of evidence.

Examiner Wrenn: Proceed.

Q. (By Mr. Renda): Mr. Kelly, the figures which you gave for each specific year, earnings figure, contained the allocated monthly [2529] retroactive pay adjustments? A. Yes.

Q. That retroactive monthly pay adjustment goes back to what year or period?

A. I think the first payment was to Captain Stephenson about April of 1946.

Q. Do the earnings for each year represent the total earnings by total flying time?

A. Yes, they do.

Q. You read into the record the pay scale for co-pilots? A. Yes.

Q. What is the date of that contract?

A. Effective November 16, 1940, as amended to January 1, 1949.

Q. Will you please refer to Western Exhibit No. 9, Page 6, and indicate whether the pay scale is the pay scale which was in effect in 1947? It is not necessary to read it.

A. That is correct.

Q. With respect to Counsel for ALPA's question as to normal cut-back, is it your testimony a cut-back in pilot personnel has resulted in the fall of each year 1946, 1947 and 1948?

(Testimony of Arthur F. Kelly.)

A. That is correct, we have had a pilot cut-back in each one of those years.

Q. And the number has varied or has not?

A. The number has varied.

Q. That is dependent on what factor or factors?

A. Seasonal fluctuations more than anything else.

Q. Does the question as to the number of schedules [2530] which you eliminate have anything to do with the number of pilots furloughed at the end of each seasonal cut-back? A. Yes, it does.

Q. Will you please turn to Exhibit WR-1? Will you also turn, at the same time, to Exhibit W-8, and indicate if in Exhibit W-8, which is the letter of September 4 advising as to the furloughing of certain pilots, there are contained the names of the following pilots about which Mr. Bennett asked you: Babcock, is his name on Exhibit W-8?

A. Yes.

Q. Critchell? A. Yes.

Q. Edgerton? A. Yes.

Q. And Hippe? A. Yes.

Q. Refer again to WR-1. Other than those pilots you have just now named, were the others furloughed due to seasonal schedule cut-back?

A. That is correct.

Q. Is there any month in the year which in the airline industry is regarded as a normal month?

A. No.

Q. Are there any two months in a year that

(Testimony of Arthur F. Kelly.)

are usually regarded for comparative purposes as average months?

A. No. I think it fluctuates from year to year.

Q. Is it your testimony that certain employees of Western were adversely affected by reason of the sale of Route 68? [2531] A. No.

Mr. Bennett: I think that is a conclusion which we have to draw from whatever he has said. I think it calls for a conclusion.

Examiner Wrenn: Don't you think it would be helpful to have his conclusion?

Mr. Bennett: Not the way he is going to give it. It would not mean anything to anybody.

Mr. Renda: It is my witness, Mr. Bennett.

Mr. Reilly: Why be concerned if it does not mean anything?

Examiner Wrenn: You may answer.

The Witness: My answer is no one was affected by the sale of Route 68.

Q. (By Mr. Renda): Mr. Bennett queried you about a situation where a pilot is furloughed and therefore draws no pay. He asked you if that individual is adversely affected. You answered he was. Be that as it may, it is important to ascertain whether the reason for the furlough was due to the sale of Route 68?

Mr. Bennett: I do not understand the question.

Mr. Renda: I will rephrase it.

Examiner Wrenn: Proceed.

Q. (By Mr. Renda): You are familiar with

(Testimony of Arthur F. Kelly.)

the fact that one of the issues in this case is whether or not employees were adversely affected by reason of the sale of Route 68. Is it your testimony that a pilot could be furloughed and thereby be adversely affected and still not be adversely affected by reason of the [2532] sale of Route 68?

A. That is the point I was trying to make in expanding my answer to Mr. Bennett. That certainly is correct.

Q. With respect to the training program on Route 68, that you were queried on by Mr. Bennett, was there a DC-4 Training Program on in 1946?

A. I think training was going on all through the year. As far as a specific program specified for a specific date, it is difficult to say.

Q. Was it necessary for the pilots to qualify for Route 68 before flying it?

A. I think that is normal procedure.

Q. Was it necessary for the pilots to qualify over Route 63 north of San Francisco before flying it in 1947?

A. That is correct.

Q. Was it necessary for the pilots to qualify over the route extending from South Dakota, Minneapolis, St. Paul and Rochester?

A. Yes.

Q. Was it necessary for pilots to qualify for the Rapid City-Sheridan cut-off in the spring of 1947 before flying it?

A. That is correct.

Mr. Renda: No further questions.

Examiner Wrenn: Do you have any further questions, Mr. Bennett?

(Testimony of Arthur F. Kelly.)

Mr. Bennett: I have no further cross-examination.

Examiner Wrenn: You may be excused. Thank you.

(Witness excused.) [2533]

Mr. Renda: Western offers W-1 through 18; WR-1 through 7; and WX-1 through 5.

Examiner Wrenn: Is there any objection? Hearing none, they will be received in evidence.

(The documents referred to as Western Exhibits W-1 thru W-18; WR-1 thru WR-7; and and WX-1 thru WX-5 were received in evidence.)

Examiner Wrenn: Does that complete your case?

Mr. Renda: Yes.

Examiner Wrenn: Before we start United, let us take a five minute recess.

(Recess taken.)

Examiner Wrenn: On the record. Let us proceed with United's case.

Whereupon

C. F. McERLEAN

was called as a witness by and on behalf of United Air Lines, and having been first duly sworn, was examined and testified as follows:

(Testimony of C. F. McErlean.)

Direct Examination

By Mr. Reilly:

Q. Please state your name and address?

A. Charles F. McErlean, 8515 Indiana Avenue, Chicago, Illinois.

Mr. Reilly: I have handed to the Examiner two copies of a booklet which is entitled, "Before the Civil Aeronautics Board, Exhibits of United Air Lines, Inc., Docket No. 2839." It bears the date November 15, 1948. This booklet contains exhibits which are identified on the first page of the [2534] booklet U-1 through U-15.

The data contained in these exhibits is being submitted for this record at the request of Public Counsel.

On October 11, 1947, we had a pre-hearing conference in this matter. Exhibits U-2 and U-3 are responsive to Public Counsel's request number two in that pre-hearing conference.

Exhibit U-4 is in response to Public Counsel's request number one at that conference.

Exhibit U-5 is in response to Public Counsel's request three in that conference.

Exhibit U-6 and U-7 are responsive to Public Counsel's request four.

U-8 through 15 are responsive to Public Counsel's request number five at that conference.

I ask, Mr. Examiner, that the documents contained in the booklet be marked for purposes of identification in conformance with the numbers set forth on page 1 of the document.

(Testimony of C. F. McErlean.)

Examiner Wrenn: They will be marked U-1 through U-15

(The documents referred to were marked U-1 through U-15 for identification.)

Q. (By Mr. Reilly): Are your qualifications correctly set forth on U-1? A. They are.

Q. Will you amplify, but briefly, your present duties with United Air Lines?

A. Since January 1, 1946, I have been Director of [2535] United's Law Department. In the direction of that department I was responsible for the handling of all of United's legal business, including a substantial responsibility in connection with the company's labor relations. During this entire period and since the summer of 1945, I have been one of the designated negotiators of United Air Lines in connection with all its labor negotiations and I have participated in substantially all their negotiations all that time, either being a spokesman or adviser. If there are more than one, maybe I was adviser to the man who was actually handling it. That is part of the Law Department which I personally handle. I supervise the other legal work.

Q. Are you authorized to state the position of United Air Lines, Inc., in this proceeding?

A. I am.

Q. Will you please state it?

A. United Air Lines states the position that it is going to stand on the agreement it executed for the purchase of this route and which it submitted

(Testimony of C. F. McErlean.)

to the Board for approval in this case. It could not agree at any time in executing the agreement to take any pilots or other employees of Western Air Lines into its employ as part of the transaction.

Before the Board approved the transfer of Route 68, the company made this position clear, and it has not been, and it is not now, agreeable to associating any of Western's employees to its payroll. The company's position still remains the same as it was in 1947. It will not agree to take on Western employees.

Likewise, the company is unwilling to pay any more [2536] money in connection with this acquisitioner to make available any of its funds to pay the cost of any conditions for the benefit of employees that might be set up or ordered pursuant to any formula that might be established if anybody feels that such a formula is necessary. United in its opinion has already paid sufficiently for this route and the properties which it acquired for the purpose, and never has, and does not now, agree to pay any more for the purchase of Route 68.

Q. Do you have any other statement you wish to make, Mr. McErlean?

A. I do not believe so.

Mr. Reilly: You may cross-examine.

Examiner Wrenn: Mr. Bennett, you may examine the witness.

Mr. Bennett: No questions.

Examiner Wrenn: Mr. Crawford, you may cross-examine.

(Testimony of C. F. McErlean.)

Mr. Crawford: No questions.

Examiner Wrenn: Mr. Renda.

Mr. Renda: No questions.

Examiner Wrenn: Mr. Kennedy, you may examine the witness.

Cross-Examination

By Mr. Kennedy:

Q. Is United's management of the opinion now, if you know, that the acquisition of Route 68 was beneficial to United?

A. What do you mean by beneficial?

Q. In terms of its financial effect on the company's operation?

A. I did not inquire of the other members of management [2537] as to whether they had an opinion that I could be authorized to express.

Q. You do not know whether they have an opinion or not? A. That is right.

Q. Or if they have an opinion, what it is?

A. That is right.

Q. Mr. McErlean, let us suppose that United and Western pilots can work out an agreement providing for the transfer of certain Western pilots to United, and it is acceptable to the United pilots. How would United be adversely affected if it took on those Western pilots?

A. United Air Lines, in our opinion, would be adversely affected for several reasons. Number one, we never agreed to take any pilots. We

(Testimony of C. F. McErlean.)

are a party to the agreement the ALPA is working out. We have been invited to participate. We have a substantial number of our own pilots on furlough, and United Air Lines primarily desires to retain the management function of selecting its own employees. United Air Lines must take the responsibility for the safety of its operation and therefore we feel we must have full authority to make our own selection of employees, and more particularly, pilot employees.

Q. Would you not suggest that the Western pilots who might be transferred to United would not qualify?

A. I cannot suggest one way or another. But United Air Lines wants an unhampered right to select its own employees. It will not agree merely to take employees that someone else agrees ought to be put on their payroll. We are responsible for the safety operation of our company. [2538]

Q. Suppose the Burlington Formula were imposed. Why would it be inequitable to require United to bear half of the liability?

A. United Air Lines did not agree to bear any more cost. United Air Lines, it seems to us, has paid a substantial sum of money for this route, in the neighborhood of \$3,750,000. The normal practice, as I understand it, as in the Burlington Formula, the employees must find a way to make those payments out of any assets it gets. If I might say, I do not want to leave any impression by my answer that United agrees or thinks that

(Testimony of C. F. McErlean.)

a formula is necessary, or if one is found to be necessary that the Burlington Formula is the proper formula for this industry.

Q. I think we understand that. If United were acquiring all of Western, would you consider it equitable that they make such arrangement for taking over Western employees?

A. If we acquired the total airline our position would be different.

Q. Yes?

A. In that case we would wish to negotiate what that was before we signed any contract.

Q. Assuming it would be equitable to make some provision for the Western employees, why is the situation different when you take over only part of it?

A. Western Air Lines retained a substantial amount of routes to be operated. It was granted additional routes which were pending at the time which would absorb additional of its employees. United Air Lines was somewhat overstaffed itself and it had more employees than it actually [2539] needed and they could use them on this operation. We did not agree that we would do that. That was made clear to the Board before the Board approved the transaction.

Q. Suppose it were clear that some Western employees had lost their job as a result of the acquisition of Route 68, would your last answer be any different?

(Testimony of C. F. McErlean.)

A. If some employees of Western had lost their job because of this transaction?

Q. Yes.

A. My answer would be no different so far as United's responsibility is concerned.

Examiner Wrenn: Any redirect?

Mr. Reilly: No.

I offer U-1 through U-15 inclusive.

Examiner Wrenn: Is there any objection?

(No response.)

Examiner Wrenn: They will be received.

(The documents heretofore marked U-1 through U-15 for identification received in evidence.)

Examiner Wrenn: Counsel No. 57, United Air Line pilots.

Mr. Bennett: On behalf of Counsel 57 I move that their petition to intervene be withdrawn.

Examiner Wrenn: Your motion stands on the record for action by the Board. You are asking that the intervention be dismissed?

Mr. Bennett: That is right.

Examiner Wrenn: Does Public Counsel have any witnesses?

Mr. Kennedy: No.

Examiner Wrenn: This concludes the presentation of the [2540] evidence.

Mr. Kennedy: Public Counsel has circulated a stipulation which has been signed by each of the counsel appearing at this hearing. It is signed in

counterpart originals, and I would like to offer the counterpart originals which are five for the record. I will offer a duplicate for the second docket.

Mr. Reilly: I move that the intervention of UAW-CIO be dismissed.

Examiner Wrenn: You raised a question in my mind there, Mr. Reilly, as to whether it is an intervention. As I recall the Board's order, reopening this, it made them a party to it by express order of the Board rather than by a petition by UAW-CIO to get in here.

Mr. Reilly: I move that they be eliminated as a party to this proceeding.

Examiner Wrenn: That motion will be presented to the Board for action.

Are there any other matters that ought to be discussed at this time?

Mr. Bennett: I believe, Mr. Wrenn, we had a discussion at one time regarding what, if anything, should be done as to the decision that may come out of the arbitration between Western and United pilots. I indicated at that time that it would be our wish, and I felt it would be helpful not only to yourself and the Board, but to United and Western if that arbitration decision were a part of this record. It is my suggestion that the record be kept open at least to receive that arbitration decision. I so move. I was informed, however, [2541] that in all probability if that were done, United and Western would wish an opportunity to be heard upon it. If that is the case, I

would have no objection to that. I do think that that arbitration decision, if, as and when it is rendered, would be helpful to all of the parties to this case, and I suggest that the record be held open for its receipt.

Examiner Wrenn: I want to ask a question here, Mr. Bennett. Is there an iron clad agreement between the pilots of Western and the pilots of United settling certain of these points and agreeing on this arbitration procedure, or is that just a matter that is being talked about?

Mr. Bennett: There is an agreement signed by both groups of pilots which provides for the arbitration. Under that agreement, application has already been made to the National Mediation Board for the appointment of a neutral to sit with two pilots from each group and the arbitration is, by the agreement, designed to begin on the 26th day of this month. I think also by the terms of the agreement, the decision must be rendered by the Arbitration Board so selected by the 13th of December. The arbitration decision will definitely be through by that time under the terms of the agreement itself.

Examiner Wrenn: So there is actually something set up, so the procedure has been started. It is not a thing that can be walked away from and left?

Mr. Bennett: No.

Examiner Wrenn: Does that agreement bind all parties here, that as far as they are concerned they have to accept the decision of the arbitration

panel. Is it something they can walk away [2542] from?

Mr. Bennett: The agreement says the decision shall be binding or final on the parties.

Examiner Wrenn: If a decision is handed down, it will be shown that is what the pilots are bound to accept?

Mr. Bennett: That is correct.

Examiner Wrenn: That is not binding on the management of Western or United or the Board. It is strictly the pilots?

Mr. Kennedy: Yes.

Mr. Bennett: Yes.

Mr. Renda: Western took the position yesterday that it would oppose any motion made on behalf of the ALPA to hold the record open until such time as you could receive into evidence the arbitration award. Our position today is no different. Without having to restate the reasons I gave yesterday, I feel in our opinion that the move, whether right or wrong, would tend to preempt the Board's decision in this case. The Board has before it the principal issue; whether any employees were adversely affected. I am inclined to think that is as a result of this arbitration procedure which the ALPA has sponsored, and which the Western and United pilots are going through, that there be a finding that certain pilots were adversely affected and that is where my fear attaches. I am not concerned with their finding as to what comes after. It is the first issue which must be settled. Were any pilots or employees adversely

affected? If that question is answered No, then there is no need for determination as to whether to compensate, remunerative or return to status quo. I am fearful if that is received into evidence and made a part of the record in this case, it will, without any doubt [2543] in my mind, prejudice the right of Western, not only with respect to pilots, but particularly more so with personnel represented by the BRC.

Mr. Bennett: May I make one statement in response to that?

Examiner Wrenn: Yes.

Mr. Bennett: I think that the objection that Mr. Renda makes would be certainly more appropriately made at the time the arbitration decision is before us. If the decision made no reference to adverse effect, but let us say, stated if the Board in its wisdom decided that pilots should follow the route, that no more than the recommendation would be accepted. Ours is in the nature of a recommendation. It is not designed to influence the Board in its decision on who was affected. I am being perfectly honest as I understand the matter. This is not designed to influence the Board. It is designed, if you please, to bring the Western and United pilots into agreement as to who, how many and how they should be integrated if and provided the Board does find that they are adversely affected and, further, that they should follow the route.

Examiner Wrenn: Is one of the questions to be submitted to the panel the question of whether

or not the pilots of Western on Route 68 were adversely affected?

Mr. Bennett: I am not certain that that question is specifically asked. I am not certain about that.

Examiner Wrenn: This is not an official body or Governmental Agency or anything that is making a determination on that so that it can be urged that we should take judicial notice? [2544]

Mr. Bennett: No. This is an arbitration of two groups of individual private citizens.

Examiner Wrenn: Two pilots and two pilots from Western and a fifth man on the personnel side.

Mr. Bennett: Yes.

Mr. Reilly: Then there would not be any purpose in submitting the decision unless they felt it was going to be beneficial to them. We are dealing with humans who follow natural impulses. United Air Lines will object to the receipt in evidence of any decision of any arbitration board. The persons who will be affected by the decision are not parties to that agreement. The Civil Aeronautics Board cannot issue an order unless it is based on findings. There will be nothing, as I understand it from the attitude of Mr. Bennett, except the bare recommendation of the arbitration board.

Even if the copy of the contract and the questions submitted were made a part of this record, United would still want the opportunity to examine on what were the issues and what were the

attitudes and the basis upon which the findings were made. There would not be an arbitration board unless there has been at least one of the parties adversely affected. There is no question that that is their position.

Mr. Bennett said for the first time today, "if" any parties were adversely affected. He read from a partly prepared statement. If the Board should accept and endeavor to use the decision of the arbitration board in its order in this proceeding, United Air Lines is taking the position that they will not absorb or accept Western employees.

I want to put Mr. Bennett on notice we will object [2545] to this decision being put in the record. We object to the record being held open for any more time than the fifteen days allowed for Mr. Renda to put additional information in the record and the time for Mr. Bennett to rebutt the exhibits submitted by Western.

Mr. Bennett: May I make a statement?

Originally it had not been our intention to submit the arbitration decision or the agreement or any part of that machinery. I think at the very most, whether it was in the nature of the arbitration decision itself or the agreement, the most that might be said for what we submitted was that it was our recommendation. That is what I desire most because if we settle these differences between United and Western we would be in a position at that time to make a recommendation only as to number, identity and how it should be accomplished by way of integration. The Air Lines

Pilots Association, Western and United pilots, this Board, Public Counsel, United and Western might rely upon, if in the Board's wisdom they decided to integrate the seniority list, could be done without creating any furor. That was our original thought upon the subject, and it has not changed. The most we could possibly do is make a recommendation to the C.A.B. through yourself and by so doing indicate to Western and United, if the Board makes a decision along those lines, that there would not be created a furor.

Mr. Kennedy: I was going to say I think Mr. Bennett is right. He is saying what he will submit is a recommendation of the pilots, or statement of position of the pilots, which will have no evidenciary value showing anybody is adversely said. In view of what he says, it seems to me the objection [2546] which counsel for Western and United make is groundless.

Mr. Reilly: Is it your opinion that in a proceeding such as this that the Board and parties should be free to submit Ex Parte and extra judicial statements to the Board?

Mr. Kennedy: They should be free to state what their position is. I do not think they should be free to submit Ex Parte evidence restatements, but it is not offered for that purpose.

Mr. Reilly: I think the record speaks for itself.

Mr. Renda: It is not being offered for that purpose so why clutter the record with it? It

would not be of any help. It would not be considered as part of the record.

Mr. Bennett: I think it would be helpful.

Mr. Reilly: You and Mr. Kennedy better get together.

Mr. Renda: It is being offered.

Examiner Wrenn: It is perfectly clear that there is not going to be any agreement that the record be held open to receive that. Conceivably, if your decision is submitted, it might be such that the parties would not want to ask any question about it. They are not going to agree to it in advance. They do not want to do that. I am going to grant your motion to this extent: I will hold open this record until the 15th of December to permit you to offer it. If it is not submitted by then the record closes automatically. If by that time you offer it and the parties indicate they have no objection, I will receive it and close the record.

On the other hand, if the parties do have objection to it, it may be necessary to hold a further hearing on it. However, we are not agreeing that that can be offered and [2547] received in evidence.

Mr. Renda: Your last statement covered one point I had in mind. Even though it were to come in, it will not be received in evidence and not be a part of the record. Notwithstanding that fact, in order to safeguard Western's rights, I want to make a motion on the record now that unless the Examiner is advised to the contrary, if that is presented before the 15th of December, it

shall be Western's position that we object to the receipt of it.

Mr. Reilly: That is United's position.

Examiner Wrenn: I want the record to be clear that I have that in mind.

Mr. Reilly: We want the right to cross-examine with respect to the exhibit.

Examiner Wrenn: I understand that, and it is so understood unless Western and United after seeing the document agree to its going in, then I will receive it and close the record. I am merely holding the record open to permit you to offer it. It is not an indication that it will be received in evidence. We may have to have a further hearing on that. It will depend upon the wishes of the party.

This question of further procedural steps is somewhat complicated by the last situation here. It would have to be clarified in the light of what happens when the record is finally closed around December 15, but I take it you gentlemen want to submit briefs?

I might say, as far as I am concerned, this record was certified to the Board and it is certified. So far as I know, that is the procedure. The record is certified to the Board and it will go to them. I do not know when they will [2548] hand down a decision.

Mr. Renda: We are willing to waive submission of briefs to the Board, but we want to reserve the right to argue to the Board.

Mr. Reilly: I wish to suit the convenience of the ALPA.

Examiner Wrenn: Off the record.

(Discussion off the record.)

Examiner Wrenn: On the record. For the benefit of the record, I will say it would be my own opinion that the same procedure that was followed in 1947 would be followed here, and that is, that final decision would be handed down without a tentative decision.

Assuming that is the case, Western wants oral argument before the Board.

Mr. Renda: If the Examiner feels it would be helpful to submit brief, we have no objection but we are not proposing it ourselves.

Examiner Wrenn: How do you feel about it?

Mr. Crawford: If we are going to have oral argument, I think it would be helpful to the Board to have briefs. I will abide by the decision of the others.

Mr. Bennett: I would prefer to waive briefs and argue orally.

Mr. Kennedy: It is up to counsel because they are the ones that have the interest, but I would express the opinion it would be more desirable to have briefs, and it would also be more helpful. If counsel does not feel that way, and apparently they do not, they may do what they like.

Examiner Wrenn: I am just trying to get your thinking. [2549] We cannot make a final determination as to what happens on December 15 as

to whether the record is closed or whether it might be necessary to do something further about this document. At that time I will indicate the final procedure.

If there is nothing more, we will close the hearing. Thank you.

(Whereupon, at 11:50 o'clock a.m., the hearing in the above-entitled matter was closed.)

Received November 25, 1949. [2550]

Before the Civil Aeronautics Board

AIR LINE PILOTS EXHIBIT No. 1

In the Matter of:

WESTERN AIR LINES, and UNITED AIR LINES, INC.

Reopened Route 68 Case

Docket No. 2839

Air Line Pilots Association, International

Statement of A. W. Stephenson

Western Air Lines, Inc., Pilot Employee

A. W. Stephenson, a pilot employee of Western Air Lines, Inc., continuously since May 5, 1928, makes the following statement:

That the monthly pay of DC-4 and DC-3 captain air line pilots with Western Air Lines, Inc., in September, 1947, was as follows:

DC-4 Captains	\$1,035.00
DC-3 Captains	815.00;

and that the monthly pay of DC-4 and DC-3 co-pilots with Western Air Lines, Inc., in September, 1947, was as follows:

DC-4 Co-pilots	\$420.00
DC-3 Co-pilots	350.00;

That the allotment of flying time to all pilots of Western Air Lines, Inc., in September, 1947, and prior and since that date, was and still remains strictly in accordance with pilot seniority. That is to say, the more senior pilots on Western's system are entitled to and are assigned the flying time available on the best routes and the best-paying equipment, and so on down the seniority list until a curtailment requires the last junior pilot to be without any flying time and he may be thus furloughed;

That on or about the 11th day of March, 1946, he bid and was awarded a permanent captain DC-4 run on Western's Route 68; that he qualified on said route and flew the same until about September, 1947, when Western sold said Route 68 to United Air Lines, Inc.;

That as a result of the sale of Route 68, as aforesaid, he was required to and did qualify on Route 63 (Los Angeles - San Francisco), and that in so doing he lost approximately 21 hours of gainful flying time with a consequent pay loss of \$175.00;

That A. W. Stephenson knows of his own knowledge that, by reason of the sale of Route 68 of Western Air Lines, Inc., to United Air Lines, Inc., in September of 1947, and by reason of subsequent movement of the more senior pilots in Western's

system to lesser positions on Western's system, the Company discharged some twenty-odd of Western's most junior pilots, and all of the remaining pilots on Western's system were adversely affected and thereby suffered a continuing loss of seniority rights and a continuing impairment of their employment rights of every kind and character. This adverse effect upon the air line pilots of Western Air Lines, Inc., took varying forms. Some pilots were required to move from Route 68 and check out on other routes with a consequent loss of pay. Many pilots were required to take a reduction in status from captain to reserve pilots or co-pilot, or from reserve pilot to co-pilot, with the consequent loss of earnings; [2554]

That he, A. W. Stephenson, has in his possession affidavits from 21 pilot employees of Western Air Lines, Inc., which indicate that each such pilot employee was adversely affected in his working conditions with Western Air Lines, Inc., immediately subsequent to and as a result of the sale of the Los Angeles-Denver Route 68, and thereby suffered a continuing loss and damage of every kind and character to his seniority rights as well as his employment rights;

That this loss of employment status by the pilot employees of Western Air Lines, Inc., is a continuing loss and damage that will never be rectified unless and until the purchasing Company (United) is required to accept into its employ the number of pilots who were flying Route 68 at the time this

route was operating normally as a part of Western's system;

That he, A. W. Stephenson, discussed with each of the 21 pilot employees named in this statement the adverse effect which the sale of Route 68 had made upon their working conditions and that, in many instances, he has personal knowledge that the facts hereinafter set forth are true; that the names of these 21 air line pilot employees and the context of their affidavits above mentioned are as follows:

1. Richard M. Kennedy, 1215 South Pine, San Gabriel, California, was employed by Western Air Lines, Inc., continually, with the exception of furlough periods, as a pilot since July 1, 1946. That prior to September, 1947, he was flying Route 68 steadily as a co-pilot. That subsequent to the sale of Route 68 and in September, 1947, he was furloughed and remained in this status until May, 1948; that he was called back to work in May, 1948, and again furloughed in September, 1948; that his loss of pay during the period above mentioned was approximately \$3,160.00.

2. L. E. Warden, 6503 West 96th Place, Los Angeles, California, has been continuously in the employ of Western Air Lines, Inc., as a pilot since September 6, 1944; that during 1946 and until September, 1947, the date of the sale of Route 68, his position on Western's seniority list allowed him to fly some captain time and during that period he was never more than 10 seniority numbers away from flying as a captain. That after the sale of Route 68 by reason of the movement of more senior

pilots from Route 68 to other routes on Western's system, he has not been able to fly any captain time since September, 1947, and is presently 20 seniority numbers away from flying as captain.

3. E. W. Chapman, 3200 Elm Avenue, Manhattan Beach, California, has been continuously in the employ of Western Air Lines, Inc., as a pilot since on or about August 15, 1942. That prior to the sale of Route 68, he was flying as captain on DC-3 equipment on Western's Route 13 continuously since October, 1946. That after the sale of Route 68 he was demoted to flying co-pilot on DC-3 equipment on Route 13, with a consequent loss of [2555] pay amounting to approximately \$322.50 per month; that this loss has continued from September, 1947.

4. Walter Hail, 415-C Venice Way, Englewood, California, has been continuously in the employ of Western Air Lines, Inc., as a pilot since on or about September 1, 1942. That prior to the sale of Route 68 he was flying steadily as captain of DC-3 equipment on Western's Route 13 for a period of approximately 5 months. That after the sale of Route 68 and in November, 1947, he was demoted to co-pilot on DC-3 equipment flying Route 13, with a consequent loss of pay amounting to approximately \$270.00 per month, and that such demotion lasted from November, 1947, to May, 1948.

5. Frank Cole, 5122 West 123rd Street, Hawthorne, California, has been continuously in the employ of Western Air Lines, Inc., since on or about March 24, 1943. That prior to the sale of Route 68 he was flying as captain on DC-3 equip-

ment on Western's Route 13 for a period of approximately 8 months. That after the sale of Route 68 he was demoted to flying as co-pilot on DC-3 equipment for approximately 9 months with a consequent loss of pay of approximately \$2,800.00 annually.

6. Walter Peters, 2504 West 81st Street, Englewood, California, has been continuously in the employ of Western Air Lines, Inc., since on or about September 12, 1943. That prior to the sale of Route 68 he was flying as captain on DC-3 equipment on Route 13, with average earnings of approximately \$650.00 per month. That after the sale of Route 68 he was demoted to co-pilot on DC-3 equipment flying Route 13, with an average monthly earning of approximately \$440.00.

7. John Barchard, 1105 North Beverly Glen, Los Angeles, California, has been continuously in the employ of Western Air Lines, Inc., as a pilot since on or about June 8, 1941. That in September, 1946, he bid and was awarded a permanent captaincy on DC-4 equipment on Western's Route 63; that he qualified and flew the same until about September, 1947. That after the sale of Route 68 he lost his bid run aforesaid and was demoted to reserve captain flying DC-3 equipment on Route 63 and other Western routes, with a consequent loss in pay of approximately \$170.00 per month. That this loss of pay continued for a period of 14 months or a total of approximately \$2,380.00.

8. Berle M. Holt, 6250 Klump Avenue, North Hollywood, California, has been continuously in the

employ of Western Air Lines, Inc., as a pilot since on or about August 31, 1942. That prior to the sale of Route 68 he was flying as captain on DC-4 equipment on Western's Route 63 steadily since about April, 1947. That after the sale of Route 68 and on or about September 22, 1947, he lost his captain run on DC-4 equipment and was [2556] demoted to flying captain on DC-3 equipment on Routes 13 and 63, with a consequent loss of pay amounting to approximately \$165.00 per month. That this loss of pay continued for a period of approximately 11 months, or a total of \$1,815.00. That in February, 1948, he was demoted to co-pilot and so remained for a period of three months, with a resultant loss in pay in the approximate amount of \$900.00.

9. J. E. Sheasby, 14658 Gilmore Street, Van Nuys, California, has been continuously in the employ of Western Air Lines, Inc., as a pilot since on or about January 19, 1940. That in June, 1946, he bid and was awarded a permanent run as captain on DC-4 equipment on Route 63; that he was qualified and flew on said route until about September, 1947. That in September, 1947, after the sale of Route 68, he lost his bid run as a captain on DC-4 equipment and was demoted to captain flying DC-3 equipment, with consequent loss in pay amounting to \$174.00 per month.

10. J. T. Keller, 6476 West 81st Street, Los Angeles, California, has been continuously in the employ of Western Air Lines, Inc., since on or about March 15, 1941. That in June, 1946, he bid and was awarded a permanent captain DC-4 run

on Route 68; that he qualified and flew said route until about January or February, 1947. That between January and September, 1947, he was required to fly as captain on DC-4 and DC-3 equipment on Route 63 and Route 13, with a resultant loss of pay in the approximate sum of \$1,080.00. That after the sale of Route 68 and in September, 1947, he was demoted permanently to flying captain on DC-3 equipment on Route 13, where he still remained until November, 1948, with a consequent loss of pay over the 15-month period intervening of approximately \$2,550.00. That in 1946 his position on Western's seniority list permitted him to hold a permanent captain bid on DC-4 equipment on Route 68; that in November, 1948, his position on Western's seniority list was three numbers below the last pilot flying DC-4 equipment; and this notwithstanding that since September, 1947, he has moved up 5 numbers on said list.

11. Dick Young, 9717 Laraway Avenue, Englewood, California, has been continuously in the employ of Western Air Lines, Inc., as a pilot since on or about March 20, 1942. That in September, 1946, he bid and was awarded a permanent run as captain on DC-4 equipment on Route 68; that he qualified and flew said route until about February, 1947, when Western withdrew two DC-4 schedules from Route 68. That he then was required to fly as captain on DC-4 and DC-3 equipment on Western's Routes 63 and 13, with a consequent loss of pay of approximately \$765.00. That after the sale of Route 68 he was demoted to co-pilot flying DC-3

equipment, with consequent loss of pay of approximately \$170.00 per month, which continued for a period including November, 1948, or a total of approximately [2557] \$2,380.00. That his position on Western's seniority list in 1946 entitles him to hold a permanent captaincy run on DC-4 equipment; that after the sale of Route 68 in September, 1947, he has remained a co-pilot, notwithstanding that he has moved up 7 numbers on the seniority list, and on last-mentioned date remains 3 seniority numbers from permanent captain's position on the seniority list.

12. Claude L. Gray, 11051 Lomay Street, North Hollywood, California, has been continuously in the employ of Western Air Lines, Inc., since on or about November 18, 1944, as a pilot. That in 1946 and until September, 1947, his position on the Western seniority list allowed him to fly some captain time; and that during said period he was never more than 15 seniority numbers away from flying as permanent captain. That after the sale of Route 68 in September, 1947, he was 35 seniority numbers away from flying as captain and has been unable to fly any captain time since September, 1947.

13. Robert S. Conover, 5731 Woodman Avenue, Van Nuys, California, has been continuously in the employ of Western Air Lines, Inc., as a pilot since on or about April 21, 1941. That in September, 1946, he bid and was awarded a permanent captaincy on DC-4 equipment on Route 68; and that he qualified and flew said route until September, 1947. That after the sale of Route 68 he was de-

moted to captain flying DC-3 equipment on Routes 63 and 13, with a consequent loss in pay of approximately \$170.00 per month; that this demotion has continued through November, 1948.

14. H. H. Bailey, 2141 Screenland Drive, Burbank, California, has been continuously in the employ of Western Air Lines, Inc., as a pilot since on or about July 15, 1941. That in September, 1946, he bid and was awarded a permanent captaincy on Western's Route 68; that he qualified and flew said route until September, 1946. That between December, 1946, and August, 1947, he flew as captain on DC-4 and DC-3 equipment on Route 63, with intermittent flights on Route 13 as DC-3 captain. That after the sale of Route 68 and about September, 1947, he was demoted to co-pilot flying DC-3 equipment exclusively, with a consequent loss of pay of approximately \$85.00 per month.

15. Herbert H. Jordan, 1408 5th Street, Apt. D, Glendale, California, has been continually in the employ of Western Air Lines, Inc., as a pilot since on or about July 13, 1946, except during periods of furlough. That prior to September, 1947, he was flying co-pilot on Route 13 and had been so flying for a period of 6 months. That after the sale of Route 68 in September, 1947, he was furloughed and remained out of the employment of Western Air Lines, Inc., until on or about June, 1948. That in September, 1947, he was 17 seniority numbers above the most junior working pilot, and in November, 1948, he was the last working [2558]

pilot on the seniority list and was again furloughed on November 20, 1948.

16. T. G. Keeley, 5333 Marburn Avenue, Los Angeles, California, has been continuously in the employ of Western Air Lines, Inc., as a pilot since on or about January 28, 1941. That in June, 1946, he bid and was awarded a permanent captaincy on DC-4 equipment on Route 68 and that he qualified and flew said route. That after the sale of Route 68 and on or about September, 1947, he lost his permanent DC-4 captain status and was demoted to reserve pilot flying DC-3 equipment on Route 63 and other Western routes, with consequent loss of pay for a period of 14 months of \$170.00 per month, or a total of \$2,380.00.

17. Westcot B. Stone, 1611 South Street, Andrews Place, Los Angeles, California, has been continuously in the employ of Western Air Lines, Inc., as a pilot since on or about July 1, 1946, except when furloughed. That prior to the sale of Route 68 in September, 1947, he was and had been flying Route 68 steadily as co-pilot. That after the sale of Route 68 he was furloughed and remained out of employment from September, 1947, to May, 1948; that he was called back to work in May, 1948, and again furloughed in September, 1948.

18. Edward Schuster, 952 Eleventh Street, Manhattan Beach, California, has been continuously in the employ of Western Air Lines, Inc., as a pilot since on or about May 8, 1941. That in 1946 he bid and was awarded permanent captaincy on DC-4

equipment on Western's Route 68 and qualified and flew said route until about September, 1947. That after the sale of Route 68 and in September, 1947, he lost his permanent captain status and was required to fly as captain on DC-3 equipment on Route 13, with a resultant loss in pay of \$170.00 per month. That whereas, in 1946 he was approximately 31 seniority numbers ahead of the first co-pilot on the seniority list, in November, 1948, he had been demoted to reserve captain flying DC-3 equipment and was only 6 seniority numbers ahead of the first co-pilot on the seniority list.

19. George M. Ryan, 8201 $\frac{1}{2}$ No. Martel Avenue, Hollywood, California, has been continuously in the employ of Western Air Lines, Inc., as a pilot since on or about February 25, 1939. That in July, 1946, he bid and was awarded permanent captaincy on DC-4 equipment on Route 63; that he qualified and flew said route until September, 1947. That after the sale of Route 68 and in about September, 1947, he was demoted to reserve captain flying DC-4 and DC-3 equipment, with a consequent loss of pay, over a period of 13 months, of approximately \$170.00 per month. That in 1946 he was No. 11 on the seniority list of DC-4 permanent captains on Route 63; whereas, in November, 1948, he was approximately 3 seniority numbers below last permanent DC-4 captain on said list. [2559]

20. Fred W. Wahl, 8831 South Wilton Place, Los Angeles, California, has been continuously in the employ of Western Air Lines, Inc., as a pilot

since on or about May 27, 1939. That in July, 1946, he bid and was awarded a permanent captaincy on Route 68 DC-4 equipment; he qualified and flew said Route until September, 1947. That after the sale of Route 68 and in September, 1947, he lost his permanent captain bid and was demoted to flying captain on DC-3 equipment on Route 13 with consequent loss of pay amounting to approximately \$85.00 per month. That this loss continued for approximately 10 months or a total of \$850.00.

21. Floyd L. Aker, 10033 So. Manhattan Place, Los Angeles, California, has been continuously in the employ of Western Air Lines, Inc., as a pilot since on or about May 15, 1938. That in May, 1946, he bid and was awarded permanent captaincy of DC-4 equipment on Route 68; that he qualified and flew said Route until September, 1947. That after the sale of Route 68 and in September, 1947, he was demoted to captaincy flying DC-3 equipment on Route 63 with a consequent loss of pay amounting to approximately \$140.00 per month. That subsequently he was demoted to flying as reserve pilot on DC-4 equipment without a regular run from October to November, 1948, with a consequent loss in pay of approximately \$400.00.

Summary of This Exhibit No. 1

For the convenience of the Board, following is a summary of Exhibit No. 1:

Right at the outset, it must be pointed out by the Association that this Exhibit deals with only a

minor part of the problem created for the pilots of Western Air Lines, Inc., by the purchase of the Company's Route 68 by United Air Lines, Inc. The principal highlight of this case affects vitally substantially all pilot employees of Western Air Lines, Inc., for the reason that all such employees were adversely affected by the sale of Route 68 and any monetary loss sustained by the Western Air Lines, Inc., pilot employees constitutes only in a small measure the actual and material loss suffered by the pilots of this Company. Their real loss is a monetary one and a lessening of the value of their seniority rights, related directly to promotion and assignment rights, accumulated through the years in a manner that constitutes a continuing damage, which will carry on, increasing and multiplying during the lifetime of this company in ever-increasing proportions.

Accordingly, the foregoing makes it self-evident, and is conclusive proof that herein lies a situation that can only be rectified and remedied by requiring the acquiring Company, United Air Lines, Inc. (the purchaser of Route 68), to take over the number of Western Air Lines, Inc., pilots required to [2560] operate Route 68 when this Route was operating as a normal part of the Western Air Lines, Inc., operation. It is common knowledge that this Route, when operating as a part of such operation, was one of the best-paying pilot runs in the Western part of the United States.

Western Pilot Employees Adversely Affected—as shown by Exhibit No. 1	Approximate Date of Pilots Being Adversely Affected	Approximate Monetary Loss to Pilot Adversely Affected
Richard M. Kennedy.....	September, 1947	\$3,160.00
L. E. Warden.....	September, 1947	Not Estimated
E. W. Chapman.....	September, 1947	
Walter Hail	November, 1947	\$1,890.00
Frank Cole	September, 1947	\$2,100.00
Walter Peters	September, 1947	
John Barchard	September, 1947	\$2,380.00
Berle M. Holt.....	September, 1947	\$2,715.00
J. E. Sheasby.....	September, 1947	
J. T. Keller.....	January, 1947	\$3,630.00
Dick Young	February, 1947	\$3,145.00
Claude L. Gray.....	September, 1947	Not Estimated
Robert S. Conover.....	September, 1947	
H. H. Bailey.....	September, 1947	
Herbert H. Jordan.....	September, 1947	Not Estimated
T. G. Keeley.....	September, 1947	\$2,380.00
Westcot B. Stone.....	September, 1947	Not Estimated
Edward Schuster	September, 1947	
George M. Ryan.....	September, 1947	
Fred W. Wahl.....	September, 1947	\$ 850.00
Floyd L. Aker.....	September, 1947	\$2,480.00

/s/ A. W. STEPHENSON.

Received November 16, 1949. [2561]

Before the Civil Aeronautics Board
AIR LINE PILOTS EXHIBITS Nos. 2
THROUGH 16

In the Matter of:

WESTERN AIR LINES, INC., and UNITED
AIR LINES, INC.

Re-opened Route 68 Case

Docket No. 2839

Air Line Pilots Association, International
Explanation of the Statistical Exhibits

These exhibits address themselves most specifically to the first of the Public Counsel's Statement of Issues in the re-opened proceedings under Docket No. 2839, Western-United Route 68 Sale Agreement, namely, "whether any employees of Western Air Lines, Inc., have been adversely affected as a consequence of the transfer of Route 68, and certain physical properties by Western Air Lines, Inc., to United Air Lines, Inc."

The following statistical exhibits provide the quantitative proof that the transfer of Route 68 adversely affected the Western Air Line pilots. They demonstrate that as a direct consequence of the transfer, the pilots' employment opportunities were seriously limited and their earnings were reduced. They demonstrate further that Western Air Line pilots suffered far more than their colleagues on other air lines. Finally, they demonstrate that had the CAB required compliance with the well established precedent of transferring the pilots

with the routes, the adverse effect would have been completely avoided. The evidence shows that there was adequate room for the absorption by United Air Lines of all the pilots who had flown Route 68 and that there still is room for their absorption.

The statistical exhibits, therefore, will provide the factual basis for the necessary remedial action, namely, a CAB order at this time withdrawing its approval of the sale of Route 68 until such time as the Western Air Line pilots are transferred to United Air Lines with all their seniority and other benefits preserved.

In reviewing the attached statistical exhibits, it is most important to keep in mind the following highly pertinent facts about the history of the operation of Route 68. Western Air Lines began actual operation of Route 68 between Denver and Los Angeles in May, 1946, with far less than the full complement of equipment and personnel required to operate this route efficiently and successfully. As additional equipment was acquired by the air carrier it was put into service later in 1946 and during this year the company appeared to be experimenting to determine how much service the traffic over this route would support. It was not until early in 1947 that a normal operation of Route 68 was achieved, at which time there was assigned to the route no less than four DC-4 aircraft with a complement of 28 air line pilots. This normal operation of Route 68 was cut short by the company in August of 1947, when it voluntarily reduced the schedule by disposing of some of the aircraft or

transferring them to other uses. The most significant of such transfers of equipment and personnel from Route 68 occurred when the company began operating the San Francisco-Seattle Route 63 during August of 1947. Thus, the period of most normal operation, which will be used in later comparisons, is the period February to July, 1947.

United Air Lines began its operation of Route 68 late in September, 1947. This company too, went through a breaking-in and shake-down period on Route 68, during which time it also appeared to be experimenting to determine how much service the traffic over this route would support. By April of 1948, it appears to have established on the route what was very similar to its final pattern. By June, 1948, United Air Lines had established the service pattern which it still operates on Route 68. [2563]

Explanation of Exhibit No. 2

The pilot's job in essence is that of operating a given airplane a certain number of miles or a certain number of hours. One measure of the employment opportunities on a particular air line is the number of aircraft miles flown. Exhibit No. 2 presents this information. It shows that coincident with the transfer of Route 68 in September of 1947, there was a dramatic drop in the number of aircraft miles flown—from approximately 746,000 miles in August, 1947, to 538,000 miles in October. If the period of most normal operations during which Western Air Lines operated Route 68 is taken (February through July, 1947), Western Air Lines

is seen to have operated 3,900,000 aircraft miles. The same 6-month period the following year, after Route 68 was transferred, shows Western Air Lines operated only 3,300,000 aircraft miles. This is a shrinkage of 15% in aircraft miles between the two comparable periods. Approximately the same results are secured when revenue aircraft miles are analyzed. The principal cause for this shrinkage was the transfer of Route 68. Later exhibits will reinforce this point. When an air line shrinks in size, employment opportunities are lost and the pilots are necessarily affected adversely. [2564]

Explanation of Exhibit No. 3

A second measure of the employment opportunities on this air line is the number of aircraft hours flown. A similar dramatic drop is seen subsequent to September, 1947, when Route 68 was transferred. A comparison of the period of most normal operation, February through July, 1947, with February through July, 1948, shows a 13 per cent drop in aircraft hours. Approximately the same results are secured when revenue aircraft hours are analyzed. This second measure produces the same [2566] conclusion.

Explanation of Exhibit No. 4

While in the first instance, it is the number of aircraft miles or aircraft hours which determines the available pilot employment opportunities, in the final analysis it is the number of passengers which are carried over those miles which determines whether the employment opportunities are

likely to persist or whether they are just temporarily supported by the operation of aircraft which do not carry sufficient passengers to be profitable. After the transfer of Route 68, passenger miles are seen to have fallen even more drastically than either aircraft miles or aircraft hours. A comparison of the 6-month period of most normal operation shows a decline from 95,000 passenger miles in the period February through July, 1947, to 57,000 passenger miles in the same 6 months in 1948. This is a shrinkage of 40% in passenger miles. There is little doubt that when an air line drops 40 per cent of its business, its pilots are adversely affected. [2568]

Explanation of Exhibit No. 5

A final measure of pilot employment opportunities is found in the number of available seat miles operated. The same pattern is repeated here after the transfer of Route 68. The decline from 1947 to 1948, as measured by the months February through July, is 23%. [2570]

Explanation of Exhibit No. 6

It is well known that operating a DC-4 is far more remunerative to the pilot than operating DC-3's or for that matter, than operating CV-240's. This exhibit shows that the decline in aircraft miles occurred principally in the operation of the more remunerative DC-4 aircraft. This followed necessarily from the fact that with the transfer of Route 68, 4 DC-4 aircraft were also transferred. While the decline in revenue aircraft miles from

the 6-month period of most normal operation (February through July, 1947), to the same period in the following year was 15 per cent, the decline in revenue aircraft miles flown by DC-4's was 45 per cent. Thus the pilots were not only affected adversely because they lost employment opportunities as a result of the decline in aircraft miles, but, in addition, these fewer aircraft miles were flown on less remunerative aircraft. Put another way, after the transfer of Route 68, there were not only fewer jobs but the jobs that were left did not pay as well. [2572]

Explanation of Exhibit No. 7

Here the measure of aircraft hours is applied by type of aircraft. The conclusion reached on the basis of the preceding exhibit is reinforced. For the comparable 6-month period total revenue aircraft hours fell 13%, but revenue aircraft hours on DC-4's fell 42%. [2574]

Explanation of Exhibit No. 8

As in Exhibit 3, revenue passenger miles fell more drastically after the transfer of Route 68 than either aircraft miles or aircraft hours. Revenue passenger miles fell by about 40% from 1947 to 1948 (as measured by the months of most normal operation, February through July), but revenue passenger miles on DC-4 aircraft fell by a great deal more—by 58%. Not only were the pilots' employment opportunities adversely affected, but their earnings on even these limited employment opportunities were affected even more seriously. [2576]

Explanation of Exhibit No. 9

At the time the CAB was considering the transfer of Route 68, Western Air Lines represented to it that the newly instituted San Francisco-Seattle route would provide equal employment opportunities. This exhibit does not attempt to relate to the question of whether a transfer of pilots from one route to another is either equitable or justifiable. It does demonstrate clearly that the San Francisco-Seattle route is not nearly the equivalent of the Denver-Los Angeles route. For the 6 months, February through July, 1947, a total of 36,000 revenue passenger miles were flown over Route 68, Denver-Los Angeles. Over the same six months in 1948, a total of only 14,000 revenue passenger miles were flown over the San Francisco-Seattle route. The latter route is, therefore, 60% less than the [2578] former.

Explanation of Exhibit No. 10

This exhibit demonstrates that the decline in business on Western Air Lines after the transfer of Route 68 was far in excess of any decline in business done on domestic air lines generally. The first column shows practically no decline in the number of revenue passenger miles operated by all domestic air line carriers. After the transfer of Route 68 in September, 1947, the decline on Western is very obvious. Comparing the 6 months, February through July, 1947, with the same months in 1948, all domestic carriers showed a drop of about 3% while Western Air Lines showed a drop

of 40%. The principal cause on Western was the transfer of Route 68. Thus the result of this transfer was that the pilots on Western Air Lines were affected much more adversely than pilots generally throughout the U. S. [2580]

Explanation of Exhibit No. 11

This exhibit shows that after the transfer of Route 68, the seat miles flown on Western Air Lines dropped substantially—by 23% between February through July, 1947, and the same months in 1948. By dramatic contrast, however, the seat miles flown on all domestic lines did not drop; seat miles flown rose by more than 8% from 1947 to 1948. This occurred because after the transfer of Route 68 Western's pilots were flying fewer and smaller aircraft, while other pilots were generally flying larger, if not more, aircraft. [2582]

Summary

The foregoing statistical exhibits, based almost entirely on official CAB reports, have provided the quantitative evidence that Western Air Line pilots "have been adversely affected as a consequence of the transfer of Route 68."

Exhibits 1, 2, 3 and 4 have proved that the pilots were adversely affected because, as a result of the transfer of Route 68, Western Air Lines shrank considerably—from 15% if measured in aircraft hours to 40% if measured in passenger miles. When an air line shrinks by these proportions, there can be no doubt about the adverse effects on its pilot

personnel. Their employment opportunities vanished.

Exhibits 5, 6 and 7 have proved that the pilots were affected even more adversely as a result of the transfer of Route 68 than previously demonstrated, because they were thereafter required to fly small and less remunerative aircraft. The decline in DC-4 flying was very substantial—from 42% if measured in aircraft hours to 58% if measured in revenue passenger miles. The inescapable result was a reduction in pilot earnings.

Exhibit 8 proved that the CAB was previously misinformed when it was told that the newly instituted San Francisco-Seattle route would be equivalent to the transferred Route 68. It was not even half an equivalent.

Exhibits 9 and 10 have proved that the Western Air Line pilots were affected more adversely than pilots generally throughout the U. S. Pilots generally were flying 3% fewer revenue passenger miles but 8% more seat miles, but primarily as a result of the transfer of Route 68, Western pilots were flying 40% fewer passenger revenue miles and 23% fewer seat miles.

Received November 16, 1949. [2592]

AIR LINE PILOTS EXHIBIT No. 17

Air Line Pilots Association, International

Summary Comparison of Six-Month Period, February Through July 1947, 1948, and 1949

	Feb. thru July, 1947	Feb. thru July, 1948	Feb. thru July, 1949
	Number	Number	Number
		% change from same 6 months	% change from same 6 months
(1) Western Air Lines			
(2) Aircraft miles	3,901,576	3,337,184	3,185,155
(3) Revenue aircraft miles	3,812,029	3,180,937	3,099,597
(4) Aircraft hours	22,684:11	19,880:16	16,903:16
(5) Revenue aircraft hours	22,174:59	19,148:22	16,485:26
(6) Passenger miles (thous.)	95,322	56,854	56,718
(7) Revenue passenger miles (thous.)	92,883	54,681	53,856
(8) Available seat miles (thous.)	142,920	95,993	106,139
(9) DC-3 rev. aircraft miles	1,518,989	1,872,451	849,499
(10) DC-4 rev. aircraft miles	2,302,994	1,283,458	386,117
(11) CV 240 rev. aircraft miles			1,863,981
(12) DC-3 rev. aircraft hours	9,660:41	12,231:17	5,469:47
(13) DC-4 rev. aircraft hours	12,510:24	7,323:41	2,011:48
(14) CV 240 rev. aircraft hours			9,003:41
(15) DC-3 rev. pass. miles (thous.)	20,744	24,645	10,013
(16) DC-4 rev. pass. miles (thous.)	72,118	29,936	8,884
(17) CV 240 rev. pass. miles (thous.)			34,959
(18) Rev. pass. miles by route			
(19) Los Angeles-Denver (thous.)	36,270		
(20) San Francisco-Seattle (thous.)		13,907	12,776
		—61*	—65*

* Per cent change from revenue passenger miles operated same 6 months in 1947 over the Los Angeles-Denver route.

AIR LINE PILOTS EXHIBIT No. 17—(Continued)

	Feb. thru July, 1947 Number	Feb. thru July, 1948 Number	Feb. thru July, 1949 Number	% change from same 6 months	% change from same 6 months
(21) Los Angeles-Salt Lake (thous.).....	13,788	11,169	11,015	-19	-20
(22) Salt Lake-Leatherbridge (thous.).....	5,730	4,700	4,397	-18	-23
(23) Other (thous.)	36,817	23,919	23,951	-35	-35
(24)					
(25) All Domestic Air Mail Carriers					
(26) Rev. pass. miles (thous.).....	3,066,315	2,969,448	3,465,210	-3	+13
(27) Seat miles flown (thous.).....	4,555,868	5,007,302	5,795,935	+10	+27
(28)					
(29) United Air Lines					
(30) Revenue aircraft miles					
(31) On tot. system.....	29,498,536	29,898,772	27,502,512	+1	-7
(32) Domestic		29,113,972	26,420,903		
(33) Revenue aircraft hours.....					
(34) On tot. system.....	176,383.40	174,486.04	144,767.23	-1	-18
(35) Domestic		170,846.59	141,553.06		
(36) Revenue pass. miles					
(37) On tot. system (thous.).....	604,562	595,340	685,362	-2	+13
(38) Domestic (thous.)		572,875	647,667		
(39) Available seat miles					
(40) On tot. system (thous.).....	777,283	889,782	982,663	+15	+26
(41) Domestic (thous.)		854,135	926,620		

Received November 16, 1949.

**BROTHERHOOD OF RAILWAY CLERKS
EXHIBIT A**

If the Board finds it in the public interest to grant this application the petitioner requests that the Board invoke the following conditions for the protection of employes who may be affected:

1. If, as a result of the granting of the application and the transfer and amendment of a certificate of public convenience and necessity for Route 68 by which United Air Lines, Inc., purchases certain properties from Western Air Lines, Inc., any employee of either of said air carriers at the time of the said sale is displaced, that is, placed in a worse position with respect to his compensation and rules governing his working conditions, and so long thereafter as he is unable, in the exercise of his seniority rights under existing agreements, rules, and practices and under subsequently negotiated agreements and rules on either or both properties to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the monthly compensation which would have been received by him in the position from which he was displaced. The latter compensation is to be determined by dividing separately by twelve the total compensation received by the employe and the total time for which he was paid during the last twelve

B. R. C. Exhibit A—(Continued)

months during which he performed services immediately preceding the date of this displacement as a result of this transaction (thereby producing average monthly [2793] compensation and average monthly time paid for in the test period). If his compensation in his retained position in any month is less than the aforesaid average compensation in the test period, he shall be paid the difference, less compensation at the rate of the position from which he was displaced for time lost on account of his voluntary absences in his retained or current position, but if in his retained position he works in any month in excess of the average monthly time paid for in the test period, he shall be compensated for the excess time at the rate of pay of the retained position; provided, however, that nothing herein shall operate to affect in any respect the retirement on pension or annuity rights and privileges in respect to any employe; provided, further, that if any employe elects not to exercise his seniority rights he shall not be entitled to compensation. The period during which this protection is to be given, referred to herein as the protective period, shall extend from the date on which the employe was displaced to the expiration of four years from the date of said sale.

Provided, however, that such protection shall not continue for a longer period than the period during which such employe was in the employ of the said air carriers prior to the effective date of said sale.

2. If, as a result of the transactions herein ap-

B. R. C. Exhibit A—(Continued)

proved, any employe of either the Western Air Lines, Inc., or United Air Lines, Inc., is deprived of employment because of the abolition of his position or the loss thereof as the result of this transaction, he shall be accorded a monthly dismissal allowance equal [2794] to $1/12$ of the compensation received by him in the last twelve months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of this transaction. This allowance shall be made during the protective period to each dismissed employe while unemployed.

3. The dismissal allowance of any dismissed employe who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. The said air carrier and the duly authorized representative of their employes shall agree upon a procedure by which the said air carriers shall be currently informed of the wages earned by such employe in employment with other than the Western Air Lines, Inc., or United Air Lines, Inc., and other benefits received.

4. The dismissal allowance shall cease prior to the expiration of the protective period in the event of the failure of the employe without good cause to return to service after being notified by either of said air carriers of a position, the duties of which

B. R. C. Exhibit A—(Continued)

he is qualified to perform and for which he is eligible, or in the event of his resignation, death, retirement on pension, or dismissal for good cause.

5. No employe affected by the transaction approved herein shall be deprived during the protective period of benefits attached to his previous employment, such as free transportation, [2795] pensions, hospitalization, relief, etc., under the same conditions and so long as such benefits continue to be accorded to other employes of the air carriers involved in the transaction herein approved in active service or on furlough, as the case may be, to extent that such benefits can be so maintained under present authority or corporate action or through future authorization which may be obtained.

6. Any employe retained in the services of either the Western Air Lines, Inc., or United Air Lines, Inc., or who is later restored to service after being entitled to receive a dismissal allowance, and required to change the point of his employment as a result of the transaction, and within the protective period is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects, for the traveling expenses of himself and his immediate family, and for his own actual wage loss, not to exceed 2 days, the exact extent of the responsibility of both Western Air Lines, Inc., and United Air Lines, Inc., to be agreed upon in advance by the said air carriers and the employes affected; provided, however, that

B. R. C. Exhibit A—(Continued)

changes in place of residence, subsequent to the initial change caused by the transaction, which result from the exercise by the employee of his seniority rights shall not be considered as within the foregoing provision.

7. In the event that any dispute or controversy arises with respect to the protection herein, which cannot be settled by the carrier and the employe, or his authorized representatives, within thirty days after the controversy arises, it may be referred, by [2796] either party, to an arbitration committee for consideration and determination, the formation of which committee, its duties, procedure, expenses, etc., shall be agreed upon by the carriers and the employe, or his duly authorized representatives.

8(a). The following condition shall apply, to the extent it is applicable in each instance, to any employe who is retained in the service of either Western Air Lines, Inc., or United Air Lines, Inc., (or who is later restored to service after being entitled to receive a dismissal allowance), who is required to change the point of his employment within the protective period as a result of the transaction herein approved and is therefore required to move his place of residence:

(1) If the employe owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by his employing carrier for any loss suffered in the sale of his home for less than its fair value. In each case the fair value

B. R. C. Exhibit A—(Continued)

of the home in question shall be determined as of a date sufficiently prior to September 1, 1946, to be unaffected by the filing of the applications herein. Either or both of the said air carriers shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employe to any other person.

(2) If the employe is under a contract to purchase his home, the employing carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligation [2797] under his contract.

(3) If the employe holds unexpired lease of a dwelling occupied by him as his home, the employing carrier shall protect him from all loss and cost in securing the cancellation of his said lease.

(b) Changes in place of residence subsequent to the initial change caused by the consummation of the transaction herein approved and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this condition.

(c) No claim for loss shall be paid under the provisions of this condition which is not presented within one year after the date employe is required to move.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the

B. R. C. Exhibit A—(Continued)

loss under a contract for purchase, loss and cost in securing termination of lease, or any other question in connection with these matters, it shall be decided through joint conference between the representatives of the employes and either or both of the said air carriers and in the event they are unable to agree, the dispute may be referred by either party to a board of three competent real estate appraisers, selected in the following manner: One to be selected by the representatives of the employes and the said air carriers, respectively, and these two shall endeavor by agreement within ten days after their appointment to select the third appraiser, or to select some person authorized to name the third appraiser. A decision of a [2798] majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

Received November 16, 1949. [2799]

BROTHERHOOD OF RAILWAY CLERKS EXHIBIT B
(Supplement)

A list of employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes whom it is alleged have been furloughed or terminated as a result of the transfer of Route 68 by Western Air Lines, Inc., to United Air Lines, Inc., including the positions held by such employes prior to their transfers:

Denver, Colorado

Bower, D., Miss.....	Sr. Psgr. Serv. Supply Clerk	Position Abolished
Callahan, B.	Cargo Handler	Furloughed
Chelf, Phillip F.	Lead Cargo Clerk	Services Terminated
Elliott, A. R.	Cargo Handler	Position Abolished
Glaze, R. E.	Cargo Handler	Furloughed
Lisco, L., Miss.....	Psgr. Serv. Supply Clerk	Furloughed
McAndrews, E. R.	Cargo Handler	Furloughed
Rohan, F. M.	Sta. Psgr. Agent	Probably Reduced
Seveik, W.	Cargo Handler	Furloughed
Tomlin, R., Miss.....	Psgr. Serv. Supply Clerk	Furloughed
Toomer, H.	Ass't Cargo Clerk	Furloughed Temporarily
Young, R.	Ass't Cargo Clerk	Furloughed

List of personnel covered by paragraph (1) discharged (services terminated, furloughed) by Western Air Lines, Inc., and since re-employed including the names of employer:

Denver, Colorado

Elliott, A. R.	Cargo Handler	Now with Monarch Airlines
---------------------	---------------	---------------------------

List of employes transferred from Denver as a result of sale of Route 68 and alleged loss by reason thereof.

Denver, Colorado

Jacobs, Joe	Cargo Clerk	Transferred to San Francisco—moving expenses partly paid by carrier—employe paid same from Denver to Salt Lake.
Moore, Howard E.	Fleet Serv. Man	Transferred to San Francisco—loss of salary Sept. 14 to Oct. 1.
Pope, C. T.	Sta. Psgr. Agent	Transferred to San Francisco—drove own car—not reimbursed therefor.
Ross, R. H.	Sta. Psgr. Agent	Transferred to Los Angeles—moving expenses not paid.
Swift, T. G.	Sta. Psgr. Agent	Transferred to San Francisco—salary lost by reason thereof—four days—drove own car—not reimbursed for same.

Received November 16, 1949.

BROTHERHOOD OF RAILWAY CLERKS EXHIBIT B

A list of employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees whom it is alleged have been furloughed or terminated as a result of the transfer of Route 68 by Western Air Lines, Inc., to United Air Lines, Inc., including the positions held by such employes prior to their transfers:

Name	Position Prior to		Record of Service	Present Employment	Present Compensation
	Transfer	Termination or Furlough			
Callahan, B.	Cargo Handler	Cargo Handler	May 10, 47—Aug. 20, 47	Unemployed
Chelf, Phillip F.	Lead Cargo Clerk	Lead Cargo Clerk	Approx. 3 years	Out of State
Elliott, A. R.	Cargo Handler	Cargo Handler	Oct. 21, 46—Sept. 2, 47	Monareh Airlines	\$150.00 per mo.
McAndrews, E. R.	Cargo Handler	Cargo Handler	May 15, 46—Sept. 14, 47	Unemployed
Toomer, H.	Ass't Cargo Clerk	Ass't Cargo Clerk	Dec. 1, 45—Sept. 18, 47	Rehired, Sept. 25, 1947	\$ 1.12 per hr.
Jacobs, Joe	Cargo Clerk	Cargo Clerk	Approx. 4 years	Western Air Lines (S.F.)	\$ 1.32 per hr.
Moore, Howard E.	Fleet Service	Fleet Service	Approx. 2½ years	Western Air Lines (S.F.)	\$ 1.04 per hr.
Pope, C. T.	Station Agent	Station Agent	18 months	Unknown
Ross, R. H.	Station Agent	Station Agent	July 15, 46—Sept. ?	U. S Navy
Swift, T. G.	Station Agent	Station Agent	Approx. 3 years	Unknown

Received November 21, 1949.

Law Offices

Rauh and Levy

1631 K Street, Northwest

Washington 6, D. C.

February 9, 1950

Civil Aeronautics Board

Commerce Building

Washington 25, D. C.

Re: United Airlines-Western Airlines Route
#68—Docket No. 2839.

Gentlemen:

Pursuant to Examiner Wrenn's letter of January 17, 1950, regarding the filing of briefs in the above-entitled matter, we wish to take this opportunity to point out to the Board the circumstances surrounding the failure of the International Union, United Automobile, Aircraft, Agricultural Implement Workers of America (UAW-CIO), to be present at the hearing on November 14, 15, 16 and 17, 1949, and to make it clear that the UAW's failure to appear at that hearing is not to be regarded as an indication of a lack of interest in the final disposition of this case.

Although the UAW was a party to this proceeding, and although a member of this firm was an attorney of record, neither the Union nor this office received any notice of the November hearing. Nor

did we know anything about the hearing until many weeks after it had adjourned. Subsequently, we learned that a notice of the hearing was sent by registered mail to Mr. William W. Kramer who was formerly with this office, but that the notice was returned undelivered to the Civil Aeronautics Board. In checking into the matter further, we found that although the Civil Aeronautics Board has the correct address of this office, the letter to Mr. Kramer was incorrectly addressed to 1321 K Street. Although the letter was returned to the Civil Aeronautics Board, and although it was clearly misaddressed, no further effort was made to notify us of the hearing. However, it appears that the record of the case is at present sufficiently complete to warrant the Board's applying the "Burlington Formula" to employees adversely affected [3064] by the route sale, and it would seem to be unnecessary to incur the increased expense and delay that a reopened hearing would entail.

The position of the UAW-CIO was made clear at the October 11, 1948, pre-hearing conference and in the exhibits we submitted on November 12, 1948. This position is substantially the same as that of the Brotherhood of Railway and Steamship Clerks, namely, that the appropriate method of handling the problem adversely affected employees is the application of the "Burlington Formula."

We, therefore, join the Brotherhood of Railway and Steamship Clerks in urging the Board to adopt the "Burlington Formula" as the most equitable

means of adjusting the compensation of those employees who were unwilling casualties of the United Airlines' sale of Route 68 to Western Airlines.

A copy of this letter is being sent to each party of record.

Sincerely yours,

/s/ IRVING J. LEVY,

General Counsel, International Union, United Automobile, Aircraft, Agricultural Implement Workers of America (UAW-CIO).

Received February 13, 1950. [3065]

Before the Civil Aeronautics Board

February 21, 1950.

BRIEF IN BEHALF OF THE BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

Introductory Statement

This proceeding arises out of the petitions of the Air Line Pilots Association, Airline Mechanics Divisoni, UAW-CIO, and of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, each requesting reconsideration of the Board's Order, Serial No. E-772, of August 25, 1947, and the modification of said Order so as to impose conditions for the pro-

tection of employees alleged to have been adversely affected by the transfer of Route 68 by Western Airlines, Inc., to United Airlines, Inc. The Board on August 25, 1948, in response to said petitions ordered the proceeding reopened to determine the questions raised thereby.

Statement of the Case

The Board on August 25, 1947, issued its Order, Serial No. E-772, approving the transfer of Route 68 and certain physical properties by Western Airlines, Inc., to United Airlines, Inc. In doing so, the Board denied the request to [3071] invoke protective conditions for the protection of employees who were or may be adversely affected by such transaction. In its opinion the Board said in part:

“There is nothing that would indicate that any of the rights of Western’s present employees on Route No. 68 will be prejudiced by the acquisition and separation of that route by United. * * *” (Opinion page 24.)

This finding, as the Board’s statement indicates, (p. 2, of its Order of August 25, 1948), was based on the testimony of Mr. Drinkwater, President, Western Airlines, Inc., to the effect that no employee of Western will be released because of this transaction, and that every competent employee in the employ of that Company at Grand Junction and Denver, will continue with Western. (TR 106-9, Hearing of May 20, 1947; Board’s opinion pp. 23-24 of August 25, 1947.) This same testimony by Mr.

Drinkwater also apparently misled Counsel for United. (Brief to the Board of United Airlines, Inc., of June 20, 1947, pp. 54, 55.)

Subsequently the aforementioned petitions for reconsideration were filed. In a letter dated November 5, 1947, the then Chairman of the Board, James M. Landis, advised that the Board had considered the petitions for reconsideration and modification of the Board's Order approving transfer of Route 68 and had determined that before action is taken on these petitions, a conference of all parties should be held with the Board in an effort to reach an agreement as to the disposition of the issues presented. It was requested that the Board be furnished with the following information to serve as a basis for an approach to the meeting.

(1) A list of all employees represented by your organization whom it is alleged have been furloughed or terminated as a result of the transfer of Route 68, including the positions held by such employees prior to the transfer, their compensation, the date of their furlough or termination and their record of service with Western.

(2) A list of any personnel covered by paragraph (1) discharged by Western and since reemployed including the name of the employer, the date of employment and compensation.

(3) A copy of any agreement between your organization and Western with respect to the furlough or termination of employees. [3072]

The Brotherhood transmitted this information to the Board on November 19, 1947. The conference

was held by the Board, attended by its General Counsel at Washington, D. C., on December 5, 1947, with all parties present and stating their position in the matter.

Thereafter, the Board expressed an opinion that the parties should attempt to settle the matter among themselves and instructed them to arrange a conference for that purpose. In commenting thereon, the then Chairman Landis recommended the Burlington Formula as a pattern for a basis of employee protection. The parties were further instructed that they should give due consideration to any contentions offered by either party, but such contentions were not to be arbitrary or for the purpose of delay, and an honest effort should be made to settle the controversy. It was also pointed out by the then Chairman Landis speaking for the Board, that these negotiations must be limited to the question of an adoption of a formula for employee protection and not to include any discussion relative to the status of employees already adversely affected or those that may be in the future. Otherwise, he stated, the matter was to be referred back to the Board and they would then adopt or invoke an appropriate formula for the protection of the employees.

On or about December 11, 1947, the parties met at Los Angeles, California, in accordance with the Board's suggestion, but Western's representatives Mr. Drinkwater and Mr. Kelly, contrary to the Board's instructions not to include any discussion relative to the status of employees adversely af-

ected or that may be in the future, insisted that the labor organizations involved, should first furnish them with information as to just who had been adversely affected. In other words, that the labor organizations should show specific cases of adverse effect before considering a formula for their protection. (TR 883.)

On December 29, 1947, we advised the then Chairman James M. Landis, of Western's attitude and their insistence that the unions [3073] should furnish them with information as to who had been adversely affected before they would consider the question of an appropriate formula. On March 25, 1948, the Acting Chairman of the Board Mr. Oswald Ryan wrote Mr. Drinkwater, President, Western Airlines, Inc., in part as follows:

“* * * the Board has been advised of the failure of your company and the named labor organizations to reach any agreement regarding the problem of employees who may have been adversely affected by the transfer of Route 68. As we understand the situation there is a basic difference between your company and the labor organizations which centers around the question of whether a determination would be made as to just which and how many employees of Western have been adversely affected by the transaction between Western and United, before working out any provisions governing the treatment to be accorded any such employees along the lines of the Burlington Formula or upon any other mutually acceptable basis.

“In recommending to the parties that they use the Burlington Formula as a guide in negotiating terms and conditions which might appropriately be applied in relation to this transaction, the Board had in mind that the parties would first formulate the general principles to be agreed upon, and that any determination as to just which and how many employees had been adversely affected would be deferred until the formula had been established. * * * Disputes between the company and labor organizations as to whether a given employee or a group of employees is to be accorded the benefits of the formula when established seemed to the Board more properly to be matters to be resolved subsequently by the parties, either by voluntary negotiation or through arbitration in accordance with an arbitration provision included in the formula. * * * This procedure is consistent with that which has regularly been followed by the Interstate Commerce Commission in like situations.

“It is therefore recommended to all concerned that an attempt be made to agree first on the terms of a formula which will be the basis for determining the treatment to be accorded to any employees who may be found to have been adversely affected, and the question of whether any employees, and if so, which employees are entitled to the benefits provided by the formula thereafter be settled by negotiation or by arbitration. It is hoped that pursuant

to this recommendation your company and the labor organizations involved will be able to agree upon a formula including a procedure for its specific application, and thereafter to apply it all without further resort to formal proceedings before the Board.”

Again the parties convened at Los Angeles, California, and once again the representatives of Western Airlines, Inc., took the same position as before. Accordingly, under date of July 9, 1948, we advised Mr. Joseph J. O’Connell, Jr., Chairman of the Board, and set forth the report of the Brotherhood’s representative at that conference as follows: [3074]

“At this conference the same situation developed as heretofore existed; that is, the Company insisted that we show evidence as to some employee who was adversely affected by reason of the sale before even discussing the make-up of any formula. It was our viewpoint that such a procedure, is contrary to the recommendations of the C.A.B. as contained in letter of Acting Chairman Ryan dated March 25, 1948. Substantially, however, the Company’s position has not changed from that indicated in my letters to you of December 15 and 20, 1947.”

We concluded by informing Chairman O’Connell as follows:

“It is obvious by reason of the Western Airlines representative’s open defiance of the Board’s recommendation and instructions noth-

ing can be accomplished by any further conferences with them.”

Subsequent thereto, and on August 25, 1948, the Board issued its Order reopening the matter for reconsideration.

Received February 23, 1950. [3075]

United States of America Civil Aeronautics Board
Washington, D. C.

Docket No. 2839

UNITED-WESTERN ACQUISITION AIR CARRIER PROPERTY.

Decided: July 7, 1950

Order approving transfer of Route 68 and related physical properties by Western Air Lines, Inc., to United Air Lines, Inc., amended to impose conditions for the benefit of adversely affected employees sustaining certain types of monetary loss as a result of the transfer.

Appearances:

D. P. RENDA,

For Western Air Lines, Inc.

JAMES FRANCIS REILLY, and

C. F. McERLEAN,

For United Air Lines, Inc.

F. HAROLD BENNETT,
For Air Line Pilots Association.

JAMES L. CRAWFORD, and
EDWARD J. HICKEY, JR.,
For Brotherhood of Railway and Steam-
ship Clerks.

MITCHELL J. COOPER,
For International Union UAW-CIO.

WILLIAM F. KENNEDY, and
FREDERICK W. BECHTOLD,
Public Counsel.

OPINION IN REOPENED PROCEEDING

By the Board:

By order dated August 25, 1947, the Board approved the transfer of Route No. 68 operated by Western Air Lines, Inc., to United Air Lines, Inc., and also the acquisition by United of certain air carrier property owned by Western.¹ In the opinion the Board discussed the requests of intervenor labor organizations that employee protective conditions be attached to the sale, and declined to impose any such [3191] conditions on the ground that "there is nothing that would indicate that any of the rights of Western's present employees on Route No. 68 will be prejudiced by acquisition and operation of that route by United."

Subsequent to the transfer and the inauguration of operations over Route No. 68 by United, but

¹Reported in 8 CAB 298.

within the time prescribed by the Board's Rules of Practice, the intervenor, Air Line Pilots Association (hereinafter referred to as ALPA), filed a petition requesting reconsideration of the Board's order and the imposition of employee protective conditions. About the same time the employees of Western represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers Express, and Station Employees and by the Airline Mechanics Division UAW-CIO requested reconsideration of the Board's decision in the case. Thereafter a conference of all parties was held with the Board at which time the Board instructed the parties to attempt to settle the matter among themselves and to arrange a conference for that purpose. Conferences were held by the interested parties and the Board was advised of inability to reach any agreement upon the issues involved.

By Order Serial No. E-1894, dated August 25, 1948, the Board ordered that this proceeding be reopened to determine:

- (1) Whether any employees of Western Air Lines, Inc., have been adversely affected as a consequence of the transfer of Route No. 68 and certain physical properties by Western Air Lines, Inc., to United Air Lines, Inc., and

- (2) What conditions, if any, for the protection of employees of Western Air Lines, Inc., who may have been adversely affected, should be attached to the Board's approval of said transfer of Route No. 68 and certain physical

properties granted in order Serial No. E-772, dated August 25, 1947.”

Further hearing upon these issues was held before Examiner Thomas L. Wrenn. As the record in the original proceeding had been certified to the [3192] Board for decision no examiner's report was issued in the reopened hearing. At the close of the hearing parties requested oral argument before the Board which was heard and the case was submitted for decision.

It is the position of ALPA that the pilots of Western who operated over Route No. 68 should be taken over by United Air Lines and given full employment and seniority rights on that airline without prejudice. The Brotherhood of Railway and Steamship Clerks and the UAW-CIO urge that the Burlington Formula be imposed as a condition to the transaction for the protection of the employees who may have been adversely affected as a result of the route transfer. It is the position of Western (1) that no employees of Western were or have been adversely affected as a consequence of the transfer of Route No. 68 to United, and (2) that such alleged consequence does not lead to any necessity for the application of the Burlington or any other so-called formula to take care of employees and that the attachment of such conditions to the Board's original order in the case is not necessary. United stands on the agreement it executed for the purchase of Route No. 68; it did not at any time agree to take on any pilots or other employees of Western as part of the transaction. It will not

agree to take any of Western's employees stating that it would be adversely affected if it took on any Western pilots for the reason that it has a substantial number of pilots on furlough. It asserts that it must take the responsibility for the safety of its operations and therefore that it must have full authority to make its own selection of employees and in more particular, pilot employees.

ALPA contends that the pilots of Western were adversely affected as a consequence of the transfer of Route No. 68. It points out that at [3193] the time of the original hearing in this case the president of Western stated that a minimum of 14 crews or 28 pilots were operating on Route No. 68. It is pointed out that at the same time a minimum of 7 pilots were necessary to keep each DC-4 aircraft which Western was operating over Route No. 68, in normal operation. It also pointed out that Western turned over to United 4 DC-4 aircraft which were not replaced. ALPA asserts that immediately after Route No. 68 was transferred Western furloughed 23 pilots which is almost the same number of pilots it would have taken to keep the 4 DC-4 aircraft in operation. It is claimed that the transfer of Route 68 caused a reshuffling of the Western pilots on that route who were the most senior upon the Western system, with the result that they took jobs on other segments and pilots lower down the seniority list were removed. In addition to the foregoing, ALPA contends that the sale of Route No. 68 had other adverse effects on Western pilots in that the aircraft miles flown were less, revenue

aircraft miles flown were less, aircraft hours flown were less, passenger miles declined, that Western pilot personnel flew fewer and smaller aircraft after the sale of Route No. 68, and that Western pilots had less night flying after the sale of Route No. 68. It is asserted that the extension of Route No. 63 from San Francisco to Seattle has not replaced Route No. 68 in mileage or in flying time. Other adverse effects alleged to have been suffered by Western pilots in consequence of the sale of Route No. 68 were forfeiture of seniority benefits such as promotion rights, the pilot's status and seniority number. It is also alleged that as a result of the sale of the route junior pilots of Western, almost without exception, are now further away from flying as captains than they were at the date of the sale, notwithstanding the passage of time and the expansion of Western's system by reason of [3194] the extension of Route No. 63. Three Western pilots appeared as witnesses and testified regarding reduction of flying status and loss of pay. These witnesses all stated that they are not seeking to recover any claim in dollars and cents against Western, that the purpose of submitting such testimony in the form of monetary loss was only for the purpose of establishing that the pilots had suffered adverse consequences as a result of the transfer of the route.

In submitting evidence as to the adverse effect on its membership, the Brotherhood of Railway and Steamship Clerks did not purport to include all of the employees who might have been or will be adversely affected by reason of the transfer of

Route No. 68. The witness who appeared for the Brotherhood stated that an employee may be adversely affected in several ways; such, as termination of employment, furlough, and transfer to a position of less remuneration through displacement by a senior employee. The Brotherhood points to an exhibit of Western containing the names of a number of employees who received a letter dated September 9, 1947, notifying them that due to the disposal of Route No. 68 their furlough would begin effective September 14, 1947. The Brotherhood contends that this letter alone is justification for the Board finding that the employees so notified have been adversely affected by the sale of Route No. 68. The witness who appeared for the Brotherhood submitted information on the record of 17 Western employees it claims were adversely affected. The Brotherhood states that its approach to the problem has been to show through these sample cases that some adverse effect has occurred; that by reason of this fact it is sufficient for the Board to invoke protective conditions and the Board need not concern itself with the specific problems of the number of employees and the extent of [3195] adverse effect suffered by each, as such problems are those of the arbitration panel which would be set up under the provisions of the Burlington formula. The position of the UAW-CIO is substantially the same as that of the Brotherhood of Railway and Steamship Clerks.

As indicated, Western asserts that no employees were or have been adversely affected as a result of

the transfer of Route No. 68 to United, and that such alleged consequences do not lead to any necessity for the application of the Burlington or any other so-called formula to take care of the employees, and that the attachment of such a condition to the Board's original decision is not necessary. Western states that the pilots furloughed on September 17, 1947, were not furloughed as a result of the sale of Route No. 68, but because of many factors basically founded on low load factors and seasonal declines in business. It states that reductions in force followed the pattern of the general industry personnel reductions and that it was a part of an economy program in which Western was engaged beginning at the time that Mr. Drinkwater became president, January 1, 1947. It submitted an exhibit showing that as of December, 1946, Western had on its payroll a total of 2,342 employees, of which 424 were mechanics; that as of the end of the third quarter of 1947, after the sale of Route No. 68, total employees were 1,544 and mechanics 288; that as of the end of the third quarter of 1948, total employees had been reduced to 1,106 and total mechanics were reduced to 172. It points out that in that same quarter of 1948, Western was accepting delivery of ten new airplanes and had undertaken the operation of its own engine overhaul shop with substantially less mechanics than it had at the end of the third quarter of 1947. In the case of stock and storage employees represented by the Brotherhood of Railway and Steamship [3196] Clerks, Western points out that in December, 1946, it had 104 such

employees; that as of September 30, 1947, the number had been reduced to 40 and by the end of 1948 it had been reduced to 28.

With respect to the 17 so-called typical cases presented by the Brotherhood's witnesses, Western points out that 4 of these were terminated prior to August 26, 1947, the date of the Board's decision in this case, that 8 of the 17 were transferred to other Western Air Lines' stations and there is a conflict in the testimony as to whether any time was lost with respect to 5 employees, and with respect to 3 there is no conflict on that point. The remaining 5 were offered jobs at other stations but refused the transfer. Western asserts that with respect to these 17 cases there are instances where two or three employees may have lost several days time between transferring from one station to another, and one employee failed to receive full compensation for his moving expenses. Western also states that at the same time it was reducing personnel in Denver it was also reducing personnel in Salt Lake City, which had nothing to do with the sale of Route No. 68; that the average reduction of employment in Denver was 35 per cent while that in Salt Lake City was 68 per cent. Western directs attention to the fact that Grand Junction is the only station on Route No. 68 where service was eliminated completely, that with respect to the personnel at Grand Junction 3 of the station agents transferred to other points on Western, while the fourth man was furloughed and later employed by United. Other personnel there who were furloughed were offered jobs

and refused to transfer or were later employed by United. It is contended by Western that no one lost any time and that no one was adversely affected.

Western points out that the 14 crews who were flying Route No. 68 [3197] did transfer over to Route No. 63 so that there was a complete transposition of crews from Route No. 68 to Route No. 63. With respect to the 23 pilots furloughed, Western states that 7 were hired on or about September 30, 1947, after the original hearing in this case; that the remaining 16 all had to be furloughed in December, 1946; they were recalled in May or June, 1947, furloughed September 17, 1947, and recalled in the Spring of 1948, and furloughed again in the Fall of 1948; that they were the victims of customary normal trend of the business. Western also asserts that there is a decrease in the number of schedules operated in the summer and winter months and that it follows that pilots must be decreased or furloughed because of this; that the 23 are still employed by Western, having gone through that cycle from 1946, 1947, and 1948.

With respect to ALPA's exhibit which listed 21 pilots and tending to show that they had been adversely affected, Western submitted testimony to indicate that in 16 cases not only did these pilots make more money after the sale of Route No. 68 but it was only in 3 cases that there was any decrease in their earnings in 1948 as compared with 1947. Western asserts that some pilots took leave for personal reasons, but that a comparison of earn-

ings in 16 out of 19 cases show that the pilots were making more money in 1948 than they were in 1947 when they were flying Route No. 68. Western submitted an exhibit chronologically showing every pilot through his employment experience from 1946 through 1948 which shows that in each year they were furloughed in the fall or winter and called back in the spring. Western points out that in 1946 it was able to fly 6 schedules between Denver and Los Angeles because it was the only major carrier connecting with United at Denver using four-engine equipment. It refers to the Board's decision in May, 1947, consolidating United's [3198] routes and permitting it to fly nonstop from Chicago to Los Angeles as affecting Western's Los Angeles-Denver business, with the result that shortly thereafter Western reduced schedules over that route. It asserts that this reduction in schedules over Route No. 68 was purely the result of reduction in traffic and did not come about as a result of anticipation of approval of the sale of Route No. 68.

United points out that the Board's order approving the transaction was issued August 25, 1947; that the contract before the Board was explicit in its terms as to when the transfer of the property and the transfer of the certificate would take place; that United first flew schedules on Route No. 68 on September 15, 1947, and that it was not until September 23 that ALPA filed its petition for reconsideration of this case. United asserts that for the Board to attempt to impose conditions now which would be retroactive to August, 1947, would be to

ask United to accept a transaction which on the terms of the contract and evidence of record it implicitly and expressly refuses to accept. United questions the power of the Board to take such action and argues that, even if it did, United should not be asked to go back and remake a deal which the Board has allowed to be consummated and to continue for so long a time, especially where United has no responsibility for the delay in the final determination of the matter.

Public Counsel believe that the circumstantial inference from the record is that a substantial number of Western employees were adversely affected by the transfer of Route No. 68. This conclusion is based upon the following statistics: The number of aircraft miles Western flew dropped from approximately 746,000 miles in August, 1947, to 538,000 miles in October, 1947. From February through July, 1947, Western operated [3199] 3,900,000 aircraft miles. Subsequent to the transfer for the same six-month period of 1948, Western operated only 3,300,000 aircraft miles, a reduction of 15 per cent. A comparison of the same period shows a 15 per cent drop in aircraft hours and approximately the same drop in revenue aircraft hours. In passenger miles Western operations declined from 95,000,000 passenger miles in the period, February through July, 1947, to 57,000,000 in the same period of 1948, a reduction of 40 per cent. Available seat miles for the same period dropped 23 per cent. Public Counsel believe that there was a loss of employment opportunity resulting from the decline of aircraft

miles and also fewer aircraft miles were flown on two-engine aircraft on which the pilots received a lower rate of pay. Public Counsel contended that the Board should impose protective conditions of the Burlington formula for the benefit of the adversely affected non-flight personnel and that the Board should order Western to pay the cost of applying the conditions of such formula. Public Counsel also believe that the Board should request United to absorb six Western pilots found to have been adversely affected by the transfer in arbitration proceedings between the pilots of Western and of United but that if United refuses to accept such pilots the Board should impose the protective conditions of the Burlington formula for the benefit of the adversely affected pilots. Public Counsel believe there are serious doubts as to whether the Board has the legal power to impose such a condition on United at this time in view of the fact that United consummated the transaction after it had been approved without conditions for the benefit of adversely affected employees on the assumption that there would be no such conditions and that it is not now practical to undo the transaction and restore United to the position it [3200] occupied before the transaction was consummated.

The record establishes that some Western employees were adversely affected by the transfer of Route 68 and the four DC-4's. It is not disputed that a substantial number of Western employees were furloughed or terminated subsequent to the consummation of the agreement with United. It is

also undisputed that subsequent to that time, certain other personnel were reduced in status and that their compensation was correspondingly reduced. It is contended by Western that these reductions in force and in compensation were attributable either to seasonal cutbacks or to the economy program of Western's management which commenced in 1947.

It may be that some of the employees who were furloughed or reduced in status would have suffered these consequences regardless of the transfer of Route 68 and the four DC-4's. But it seems to us clear that a portion of the employees who suffered adverse consequences would not have suffered them if Western had not transferred Route 68 and the equipment necessary to operate it. Western would certainly have had to retain some of the employees it furloughed in order to operate Route 68.

This conclusion is reenforced by the fact that on September 19, 1947, Western notified twelve of its ground employees at Denver in writing that they were being furloughed "due to the transfer of Route 68." Western says that these particular employees were offered the right to exercise their seniority rights at other stations. But if seniority rights were exercised, then the employees on the bottom of the list who were bumped as a result of the exercise of seniority were adversely affected by the transfer of Route 68.

An illustration of the operation of the exercise of seniority rights is afforded by the testimony of the ALPA witnesses, Horn and Hoagland, [3201]

who stated that they had been demoted and their compensation reduced when senior pilots moved into their base after the transfer of Route 68.

We do not believe we should undertake to determine specifically which employees were adversely affected by the transfer of Route 68 and the four DC-4's and, in any event, we could not do so on this record. For present purposes, it suffices that the record does show that some employees of Western were adversely affected by the transfer of Route 68 and the four DC-4's by Western to United.

Our attention will be directed next to the questions whether the Civil Aeronautics Act empowers the Board to impose employee protective conditions in approving route transfers; whether any protective conditions should be imposed in this case and, if so, what they should be.

The principal transactions involved in this proceeding were the transfer by Western to United of the certificate for Route 68 and the concurrent acquisition by United from Western of four DC-4 aircraft and spare parts. The certificate transfer is subject to section 401(i) of the Act, and the acquisition of the related physical properties is subject to section 408(a)(2) which makes unlawful without our approval, the purchase by one air carrier of a substantial part of the properties of another.

Subsection (b) of section 408 confers upon us express authority to attach to our approval of a transaction subject to its provisions such terms

and conditions as we shall find to be just and reasonable and also to prescribe modifications of the transaction. The Board has no express authority to impose conditions in passing upon the transfer of a certificate under section 401(i). But it would seem clear that the power of the Board to approve or disapprove a certificate transfer includes the power to grant approval contingent upon compliance with specified conditions. The short [3202] answer to any challenge to the Board's power to impose conditions in a certificate transfer case is that by imposing conditions, the Board finds that without the conditions the transfer is not consistent with the public interest and should be disapproved. Hence, the imposition of conditions does no more than give the parties to a certificate transfer an opportunity to modify the basis of their transaction and thereby to avoid the order of disapproval which the Board would otherwise be compelled to issue. *Air Cargo, Inc., Agreement*, 9 C.A.B. 468 (1948).

Any doubts as to whether the general authority under sections 401(i) and 408(b) to attach conditions to an order of approval issued thereunder includes the power to impose conditions for the benefit of adversely affected employees are set at rest by three decisions of the Supreme Court. *United States v. Lowden*, 308 U. S. 225 (1939); *Interstate Commerce Commission v. Railway Labor Executives Association*, 315 U. S. 373 (1942); *Railway Labor Executives Association v. United States*, 339 U. S. 142 (1950). For present purposes, the net of these decisions is that although the Board

need not impose conditions for the benefit of adversely affected employees in cases involving route transfers, acquisitions, and mergers, it may do so in its discretion.

The situation is not altered in this case by reason of the fact that we have already approved the transfer of Route 68 and related physical properties by Western to United without conditions for the benefit of adversely affected employees and that the transfer thus approved has been consummated. As our opinion makes clear, in declining to impose conditions for the benefit of Western's employees in our original order of approval, we relied on the representations of Western's president that its employees would not be adversely affected by the transfer. United-Western, Acquisition [3203] of Air Carrier Property, 8 C.A.B. 298, 311. Regardless of whether we could modify our order to impose such conditions in the absence of those representations, we think it clear that Western by reason of them is estopped to challenge any such modification in this proceeding.

It is not suggested that there was any intent on the part of Western to mislead the Board. The existence of such an intent is immaterial. The significant facts are that the representations were made, that the Board relied on them, and that they have now proved to be erroneous.

Since, therefore, we clearly have discretion to impose in this proceeding conditions for the benefit of adversely affected employees, the crucial question is how we should exercise that discretion. We

find very persuasive in this connection not only the fact that the Interstate Commerce Commission has frequently imposed conditions for the benefit of adversely affected employees but that Congress has made their imposition by the Commission mandatory in certain situations. Section 5(2) (f) of the Transportation Act of 1940 (49 U.S.C., sec. 5(2) (f)). Similar but more elaborate protective provisions have also been imposed by statute with respect to the merger of telegraph carriers. Section 222(f) of the Communications Act (47 U.S.C., sec. 222(f)).

A route transfer or a merger or a similar transaction presumably involves benefits to the stockholders of the companies who are parties to it. On balance, it must also benefit the public as a whole; otherwise, we would disapprove it. Very often, these benefits to the stockholders and to the public will be at the expense of some of the employees of the companies involved. We think it only equitable that in such circumstances, the hardships borne by adversely affected employees should [3204] be mitigated by provisions for their benefit.

This consideration is reenforced by the practical one adverted to in *United States v. Lowden and Interstate Commerce Commission v. Railway Labor Executives Association*, supra. The Supreme Court there emphasized "the national interest in the stability of the labor supply available to the railroads." There is also an obvious national interest in taking steps to see to it that route transfers and mergers which are in the public interest should not

be prevented or delayed by labor difficulties arising out of hardships to employees incident to such route transfers or mergers.

Because of these specific considerations and because we are bound to pay considerable deference to determinations by Congress and by the Interstate Commerce Commission of what is desirable public policy in comparable situations, we find that it would be just and reasonable and in the public interest to impose in this proceeding conditions for the benefit of adversely affected employees.

The next problem to be resolved is what protective conditions should be accorded the employees adversely affected by the transfer.

ALPA has recommended that we require United to integrate into its seniority list six Western pilots to be designated pursuant to a formula arrived at by arbitration between Western pilots and United pilots. However, Public Counsel suggest that there is some doubt of our legal power to order United to absorb these employees in light of the peculiar facts of this case.

It is not necessary for us to decide this question of our legal power. Under the circumstances present herein, we do not deem it appropriate or practical to apply such condition to United [3205] retroactively.

United consummated the transaction with Western in good faith and on the supposition that it would not be required to absorb any employees of Western. To impose conditions which might substantially affect United's employee relations now

after the agreement has been fully performed and when it is difficult to undo the transaction would hardly seem fair to United.

This consideration militates not only against ALPA's proposal that we require United to absorb the six pilots but also against Public Counsel's suggestion that we request United to do so.

We wish to make one thing clear. Our decision in this case is not intended as a general rejection of the position that an acquiring carrier should be required to absorb employees of an acquired carrier or employees engaged on an acquired route. We leave that question open for future cases. In this proceeding, we hold only that in the circumstances here presented it would not be just and reasonable or in the public interest to compel United to absorb any employees of Western.

The Mechanics and the Brotherhood have recommended the imposition of the Burlington Formula for the protection of the employees they represent.

The Burlington Formula derives its name from an abandonment case decided by the Interstate Commerce Commission. *Chicago, Burlington, Quincy Railroad Abandonment*, 257 I.C.C. 700 (1944). There, the Commission, exercising discretionary power under section 1 (20) of the Interstate Commerce Act, provided terms and conditions for the protection of employees adversely affected by an abandonment. [3206]

The set of conditions provided in the Burlington case grew out of the Washington Job Protection

Agreement of 1936. This agreement resulted from conferences held between representatives of the Railway Labor Executives Association, an association composed of the various standard railway labor organizations representing the greater majority of railroad employees in the United States, and the Association of Railroads, an organization composed of the presidents of approximately all class I railroads. These conferences were held for the purpose of negotiating a national agreement which would give to railroad employees specific protection in what are generally referred to as coordination cases subject to approval by the Interstate Commerce Commission.

The principal features of the Burlington Formula are as follows:

1. A dismissal allowance equal to the employee's salary shall be paid to employees who are discharged as a result of the transaction;
2. A displacement allowance equal to the difference between old and new salaries shall be paid to employees who are assigned to a lower paying position as a result of the transaction;
3. The payments described in paragraphs 1 and 2 shall continue for four years or for the period the employee was employed by the carrier, whichever is shorter; the dismissal allowance shall be reduced by the amount of any wages or salary received by an employee in a new position;
4. Where personnel are transferred, the carrier

shall pay moving expenses and losses incident to a forced sale of a home or a forced cancellation of a lease; the amount of the loss shall be determined by a board of real estate appraisers;

5. Disputes arising under the protective provisions shall be arbitrated.

After consideration of these conditions, we are not prepared to say without further study and experience that they should be applied without modification in cases involving airline mergers and route transfers. The provisions of the Burlington Formula were worked out [3207] in the railroad industry not by administrative order but by a process of collective bargaining between substantially all elements of labor and management in that industry. Unfortunately, we do not have the benefit of collective bargaining on this subject in the airline industry.

Further, the provisions of the Formula were developed in an industry where conditions were somewhat different from those of the airline industry. Finally, they were developed originally in the 1930's when the unemployment problem in the country as a whole was considerably more serious than it is at present.

We do not suggest that even after consideration is given to these last two factors, the terms of the Burlington Formula may not prove to be the most desirable way of providing for employees adversely affected by airline mergers and route transfers. Nor do we suggest that such provisions as may ultimately be adopted by us as a matter of general

policy in cases of this sort should be less favorable to adversely affected employees than those of the Burlington Formula. It may well be that in some respects, they should be more favorable. We hold only that we are not prepared to adopt the Burlington Formula at this time and in this case.

The most desirable way to work out conditions for the benefit of employees adversely affected by mergers or route transfers in the airline industry is, as we have indicated, by collective bargaining between management and airline labor organizations. We take this opportunity to urge all concerned to undertake such negotiations as soon as feasible.

We have said on numerous occasions, and we repeat here, that some realignment of the air transport map by mergers and route transfers would be in the public interest. It would be an act of statesmanship [3208] for airline managements and airline labor organizations to work out by voluntary negotiation a general program to mitigate the hardships to employees incident to such transactions. We would not, of course, be bound by the results of such collective bargaining, but we would certainly accord them considerable weight.

Although we are not prepared to adopt the Burlington Formula in toto, we have, in the absence of a collective bargaining agreement on the subject in this industry, resorted to it for guidance in determining what provisions should be imposed for the benefit of Western's adversely affected employees.

In the present case, we find that it would be just and reasonable and in the public interest to impose conditions providing in general that adversely affected employees shall be compensated for losses in the following categories: (i) loss of salary attributable to furlough or termination of employment; (ii) loss of salary attributable to reduction to a lower paying position; and (iii) moving expenses and transportation charges incurred as a result of being forced to accept a position in a different locality.

Losses in these categories are direct and relatively easy of ascertainment. The Burlington Formula provides in addition for recovery of losses sustained as a result of the forced sale of a home or the forced cancellation of a lease. The likelihood that in a period characterized by a shortage of housing accommodations and rising real estate values such losses have been sustained in substantial amounts by very many employees does not seem to us to be sufficiently great to warrant the imposition on Western of the burden and expense of going through appraisal proceedings to pass upon claims for such losses. Accordingly, [3209] we find that it would not be just and reasonable or in the public interest to impose on Western the obligation to arbitrate or pay such claims.

In accordance with the practice followed under the Burlington Formula, we will not undertake to determine individual claims by adversely affected employees. We will leave such claims to be resolved by an arbitration tribunal to be created by Western

and its employees. The jurisdiction of the arbitration tribunal will extend not only to the question of what employees are adversely affected but also to the question of what compensation within the above categories should be paid such employees.

The latter question will, of necessity, be a broader one than it would be in an arbitration under the Burlington Formula. The arbitration tribunal will determine the proper and reasonable measure of compensation for losses sustained, as well as the actual amount of such compensation. A determination of the proper and reasonable measure of compensation will necessitate the resolution of a number of incidental questions. Among these is the question of what setoffs, if any, against loss of salary in the way of salary in other jobs or unemployment insurance or the like should be taken into account, as well as the question of what should be "the protective period," i.e., the period of time during which losses should be recognized.

We wish to emphasize that in making these determinations, the arbitration tribunal will be free to adopt some or all of the provisions of the Burlington Formula. As we have stated above, our failure to impose these provisions in our own order is not due to a conviction that they are unsound or undesirable, but rather to the fact that we have not as yet had sufficient experience to decide whether they are applicable in their [3210] entirety to the airline industry.

We have made it clear in the accompanying order that the benefits of the provisions set forth therein

shall be available to unorganized employees, as well as to those represented by labor organizations. We have, however, excluded from the benefits of the order employees other than flight personnel and dispatchers paid at a rate in excess of \$6,500 per annum. Apart from flight personnel and dispatchers, employees receiving such salaries fall within the class of executive or supervisory personnel who have traditionally been excluded from the benefits of protective labor legislation. For example, the provisions in section 222(f) of the Communications Act for the benefit of employees who might be adversely affected by a merger of telegraph carriers were expressly made inapplicable to employees earning more than \$5,000 per annum. It seems to us reasonable in view of the rise in living costs between 1943, the date of enactment of section 222(f), and the present time to fix a limit of \$6,500.

We have not made this \$6,500 limitation applicable to flight personnel or to dispatchers because in spite of their relatively high compensation, such personnel have traditionally been regarded not as executive or supervisory employees, but rather as falling within the class of persons entitled to claim the benefit of protective labor legislation. For an illustration of this fact with respect to flight personnel, we need look no further than section 401(1) of the Civil Aeronautics Act.

In the accompanying order, we have made it clear that Western and its employees may avoid arbitration if they can arrive at an agreement resolving the differences between them. We have also made

it clear that [3211] Western need not conduct separate arbitrations with each of the labor organizations and individuals concerned, since it seems to us that that would be unduly burdensome.

There remains the question of whether Western or United or both should bear the expense of complying with the arbitration tribunal's award of compensation to adversely affected employees, as well as so much of the expense of arbitration as is not borne by employees. For the reasons stated above in connection with the discussion of ALPA's proposals, we find that it would not be just and reasonable or in the public interest to impose the burden of complying with these conditions on United. Our omission in the original order of approval to provide for adversely affected employees was based on our reliance on the representations of Western's president that no such adverse effect would result. *United-Western, Acquisition of Air Carrier Property*, 8 C.A.B. 298, 311. These representations have not been borne out by experience. In these circumstances, we find that it would be just and reasonable and in the public interest to require Western to comply with these conditions and with the other provisions of the accompanying order.

An appropriate order will be entered.

O'Connell, Chairman; Lee and Adams, Members of the Board, concurred in the above opinion. Ryan, Vice Chairman, and Jones, Member, did not take part in the decision. [3212]

United States of America,
Civil Aeronautics Board
Washington, D. C.

Adopted by the Civil Aeronautics Board at Its
Office in Washington, D. C., on the
7th Day of July, 1950.

Docket No. 2839

In the Matter of the Application of WESTERN
AIR LINES, INC., and UNITED AIR
LINES, INC., Under Sections 401, 408, and
412 of the Civil Aeronautics Act of 1938, as
Amended, for an Order Approving an Agree-
ment for the Sale of Certain Properties and
the Transfer and Amendment of a Certificate
of Public Convenience and Necessity.

ORDER MODIFYING ORDER APPROVING ACQUISITION

The Board, acting pursuant to the powers vested in it by the Civil Aeronautics Act of 1938, as amended, particularly Sections 401, 408 and 412 thereof, having approved the transfer of Route 68 and certain physical properties by Western Air Lines, Inc. ("Western"), to United Air Lines, Inc., by Board Order Serial No. E-772, dated August 25, 1947, as amended by Order Serial No. E-786, dated September 10, 1947, and by Order Serial No. E-792, dated September 11, 1947; and

The Air Line Pilots Association International, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees,

and the Airline Mechanics Division, UAW-CIO, having filed petitions for reconsideration and modification of said order so as to impose conditions for the protection of employees alleged to have been adversely affected by the transfer;

The Board, by Order Serial No. E-1894, dated August 25, 1948, having ordered the proceeding reopened to determine (1) whether any employees were adversely affected by the transfer and (2) what conditions, if any, for the protection of employees adversely affected by the transfer should be attached to the Board's order of approval; and

A full public hearing having been held thereon and the Board, upon consideration of the record in the said proceeding, having issued its opinion containing its findings, conclusions, and decision, which is attached hereto and made a part [3213] hereof;

It Is Ordered That the approval granted in Order Serial No. E-772, dated August 25, 1947, as amended, be and it hereby is made subject to the following additional terms and conditions:

1. Western shall, upon written request, submit to arbitration the following questions:

(a) The identity of the individual Western employees who sustained monetary losses in the categories specified in subparagraph (b) below as a result of the transfer by Western to United of Route 68 and related physical properties;

(b) The amount which each of such employees should be paid by Western to compensate them for

monetary losses sustained in each of the following categories:

(i) Loss of salary attributable to furlough or termination of employment;

(ii) Loss of salary attributable to reduction to a lower paying position;

(iii) Moving expenses and transportation charges incurred as a result of being forced to accept a position in a different locality;

2. A request for arbitration filed on behalf of employees represented by a labor organization shall be filed by such labor organization; a request on behalf of an employee not so represented shall be filed by such employee; Western shall not, however, be obligated to submit the questions defined in paragraph 1 above to more than one arbitration tribunal;

3. Nothing in this order shall preclude a determination of the questions defined in paragraph 1 above, insofar as they relate to employees of Western represented by a labor organization by agreement between Western and such labor organizations; nor shall anything in this order preclude a determination of the questions defined in paragraph 1 above, insofar as they relate to an employee or employees not so represented, by agreement between Western and such employee or employees;

4. The written request for arbitration shall be served on Western within thirty days of the date of service of this order unless the time for the service of such request shall be extended by agreement of Western and the labor organization or individual concerned;

5. The method of selecting the arbitrator or arbitrators and the procedure to be followed in the conduct of the arbitration shall be determined by agreement of Western and the labor organizations and individuals requesting arbitration; in the event that such agreement cannot be reached within forty days of the service of the request for arbitration, Western or the labor organization or individuals requesting arbitration may file with the Board an application requesting the Board to prescribe the method of selecting the arbitration tribunal and the rules in accordance with which the arbitration shall be conducted; the application shall be accompanied by a detailed draft proposal for a method of selecting the arbitration [3214] tribunal and for a procedure in accordance with which the arbitration shall be conducted; upon receipt of such application or applications, the Board will prescribe by order the method of selecting the arbitration tribunal and the rules for the conduct of the arbitration;

6. Claims on behalf of the employees for monetary losses in the categories described in paragraph 1(b) above as a result of the transfer of Route 68 and related physical properties alleged to have been sustained prior to the conduct of the hearing by the arbitration tribunal shall be filed with the arbitration tribunal in such form and within such time as that tribunal shall fix; if the arbitration tribunal shall determine that employees of Western who have sustained monetary losses in the categories defined in paragraph 1(b) above as a result of the

transfer of Route 68 and related physical properties subsequent to the date of the arbitration award should be compensated for such losses, and if it shall not make provision for subsequent losses in its arbitration award, it shall prescribe in such award a procedure for the filing and determination of claims for such subsequent losses; failure to file a request for arbitration pursuant to paragraph 2 of this order shall not preclude the filing of a claim on behalf of an employee with an arbitration tribunal subsequently established at the request of other labor organizations or employees;

7. The arbitration tribunal shall not entertain a claim on behalf of an employee who at the time the alleged monetary loss was sustained was receiving from Western compensation at a rate in excess of \$6,500 per annum, provided that this limitation shall not apply to flight personnel or to dispatchers;

8. The expenses of such arbitration shall be paid in such manner as Western and the labor organizations and individuals requesting arbitration shall mutually agree; in the event that such agreement cannot be reached, Western shall pay the expenses of any arbitrator or arbitrators designated by it; the labor organizations and individuals requesting arbitration shall pay the expenses of any arbitrator or arbitrators designated by them; one-half of all other expenses, including the expenses of a neutral arbitrator or arbitrators, shall be paid by Western; the remaining one-half of such expenses shall be borne by the labor organizations and individuals

Registered:

Air Line Pilots Assn., Int.; Att: Harold Bennett, 3145 W. 63rd St., Chicago, Ill.

Airline Mechanics Division, UAW-CIO, Irving J. Levy, Gen. Counsel, 1631 K St., N. W., Wash., D. C.

Brotherhood of Railway and Steamship Clerks, Frt. Handlers, Express & Station Employees; Att.: Mr. George M. Harrison, Cincinnati, Ohio.

Western Air Lines, Inc.; Att.: Paul E. Sullivan, 6060 Avion Drive, Los Angeles, California.

United Air Lines, Inc.; Att.: S. P. Martin, 5959 S. Cicero Avenue, Chicago, Ill.

Regular:

Larry Cates, Wash. Rep., Air Line Pilots Assn., Int., 1185 Nat'l Press Bldg., Wash., D. C.

Michael J. Keane, Jr., 910 - 17th St., N.W., Washington, D. C.

Henry Kaiser, 1830 Jefferson Place, N.W., Washington, D. C.

Mitchell Cooper, Rauth and Levy, 1631 K St., N.W., Washington, D. C.

Dominic Di Galbo, International Representative, Airline Mechanics Division, Newark, N. J.

James L. Crawford, 1015 Vine Street, Cincinnati, Ohio.

D. P. Renda, c/o Western Air Lines, Inc.,
6060 Avion Drive, Los Angeles, California.

John T. Lorch, Mayer, Meyer, etc., 231 S. La
Salle St., Chicago, Ill.

Paul M. Godehn, Mayer, Meyer, etc., 231 S.
La Salle St., Chicago, Ill.

J. Francis Reilly, Commonwealth Bldg., 1625
K St., N.W., Washington, D. C.

Donald C. McBain, Counsel, 57 Air Lines
Pilots in the Employ of United Air Lines, Inc.,
3367 Rowena Avenue, Los Angeles, California.

Albert F. Beitel, Morris, KixMiller and
Baar, American Security Bldg., Wash., D. C.

Edw. J. Hickey, Tower Bldg., Wash., D. C.

Special Messenger:

Burgess—POD.

Delany—POD.

Hawkins—POD.

Dayhoff—POD.

Docket, Section, Bulletin Board, Kinsey and
Leasure.

Examiner: Wrenn B-101.

Public Counsel: Highsaw B-38.

Served July 21, 1950. [3217]

United States of America,
Civil Aeronautics Board

Adopted by the Civil Aeronautics Board at Its
Office in Washington, D. C., on the
15th Day of August, 1950.

Docket No. 2839

[Title of Cause.]

ORDER EXTENDING DATE FOR FILING
OF PETITION FOR RECONSIDERATION

The Board, by Order Serial No. E-4444, dated July 7, 1950, and its opinion attached thereto, having made its approval of the transfer of Route No. 68 and certain physical properties by Western Air Lines, Inc. (Western), to United Air Lines, Inc., subject to certain additional terms and conditions as set forth in such order;

Western, having filed with the Board a request for an extension of time in which to file a petition for rehearing, reargument, or reconsideration of said order and decision, alleging in support thereof that its staff is fully engaged in preparation for a series of proceedings during the month of August;

Western having also requested a stay of the Board's order and decision;

The Board, upon consideration of said petition, finding that:

(1) The public interest will not be adversely affected by granting the request for an extension of time in which to file a petition for rehearing,

United States of America,
Civil Aeronautics Board

Adopted by the Civil Aeronautics Board at Its
Office in Washington, D. C., on the
19th Day of September, 1950.

Docket No. 2839

[Title of Cause.]

ORDER No. E-4620

The Board, by Order Serial No. E-4512, dated August 15, 1950, having granted a motion by Western Air Lines, Inc. (Western), to extend the time for filing of a petition for rehearing, reargument, and reconsideration of the Board's opinion and order, Serial No. E-4444, dated July 7, 1950, and having denied in Order Serial No. E-4512 Western's motion for a stay of Order Serial No. E-4444; and

The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (the Brotherhood), an intervenor in this proceeding, having thereafter filed a motion to clarify and modify Order Serial No. E-4512 so as to provide that the extension of time to file a petition for rehearing, reargument, and reconsideration shall be applicable to all other parties as well as to Western, and requesting that the Board extend the time within which the Brotherhood is required to file a request for arbitration pursuant to paragraph 4 of Order Serial No. E-4444 until thirty days after the Board issues its order upon rehearing, reargument, and reconsideration; and

The Board finding that:

1. The extension of time granted to Western to file a petition for rehearing, reargument, and reconsideration of the Board's opinion and order, Serial No. E-4444, dated July 7, 1950, was intended to be applicable to all parties of the proceeding and not just to Western, and the order does not require any modification in this respect; [3234]

2. It would not be desirable to postpone until Board action on the petitions for reconsideration the taking of preliminary steps pursuant to Order Serial No. E-4444, but, on the other hand, the employees represented by the Brotherhood should not be penalized for what appears to have been an inadvertent default;

It Is Ordered That:

1. That portion of the motion of the Brotherhood which requests that an extension of time to September 21, 1950, within which to file a petition for rehearing, reargument, and reconsideration of the Board's opinion and order of July 7, 1950, Serial No. E-4444, be granted to all other parties to this proceeding, as well as to Western, be and it hereby is dismissed as unnecessary;

2. The time within which written requests for arbitration pursuant to paragraph 4 of Order Serial No. E-4444 are required to be filed, be and it hereby is extended to a date fifteen days from the date of this order.

By the Civil Aeronautics Board:

[Seal] /s/ M. C. MULLIGAN,

Secretary.

Served September 19, 1950. [3235]

Before the Civil Aeronautics Board

Docket No. 2839

[Title of Cause.]

PETITION FOR REHEARING, REARGUMENT, AND RECONSIDERATION OF BOARD ORDER SERIAL No. E-4444, DATED JULY 7, 1950

Now comes the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (the Brotherhood), an intervenor in this proceeding, and, pursuant to the Board's Rules of Practice and also specifically pursuant to leave granted in the Board's Orders Serial Nos. E-4512 and E-4620 of August 15 and September 19, 1950, respectfully petitions this Honorable Board to grant rehearing and reargument on the Board's Order Serial No. E-4444, dated July 7, 1950, for the reasons hereinafter specified, and upon such rehearing and reargument to reconsider its said order and grant the relief herein requested.

Grounds Relied Upon

1. Said Order Serial No. E-4444 of July 7, 1950, provides in paragraph 12 thereof as follows:

“The Board hereby retains jurisdiction of this proceeding for the purpose of modifying or clarifying any provision of this order and for the purpose of imposing from time to time such other or further terms and conditions as to the Board may seem just and reasonable.”
(Emphasis supplied.)

2. The Brotherhood respectfully submits that the said Order of the Board requires modification or clarification because the Board's Order is [3236] susceptible to possible misinterpretation of the extent to which (a) the Board has itself imposed specific conditions; and (b) the extent to which the Board has delegated the determination of specific conditions to an arbitration tribunal.

3. As we read the Board's opinion, attached to and made a part of its Order, we understand the Board to have found and concluded that it is not prepared to adopt the so-called Burlington Formula in toto as the conditions to be imposed; but that it has concluded to impose conditions providing that adversely affected employees "shall be compensated for losses in the following categories: (i) loss of salary attributable to furlough or termination of employment; (ii) loss of salary attributable to reduction to a lower paying position; and (iii) moving expenses and transportation charges incurred as a result of being forced to accept a position in a different locality." (Emphasis supplied.) The true intendment of the foregoing statement in the Board's opinion clearly appears to expressly provide compensatory remuneration for the specific types of adverse effect enumerated. The Board then goes on to expressly exclude any compensation for losses incurred by employees as a result of the forced sale of a home or the forced cancellation of a lease.

4. Finally, the Board concludes that in accordance with the practice followed under the Burlington Formula, it will not undertake to determine individual claims, but will leave the resolution of that question to an arbitration tribunal to be created by Western and its employees. By this we understand the Board to have empowered the arbitration tribunal to determine which of the employees suffered adverse effects of the type for which the Board has ordered compensatory remuneration. The Board further empowers the arbitration tribunal to decide the question of what compensation within the specified categories should be paid such employees. The Board, in explaining this further provision as entailing not only the actual amount of such compensation but also its proper and reasonable measure, gives examples of what it has in mind by mentioning possible setoffs and specifically including the question of the duration of time within which the compensatory benefits will be paid. [3237]

5. We respectfully submit that the question of how long the compensatory benefits should be made available to employees suffering adverse effects caused by the transfer of Route 68 by Western Air Lines, Inc. (Western), to United Air Lines, Inc. (United), is not a proper question for delegation to an arbitration tribunal, but is one properly within the exclusive statutory authority and responsibility of the Board itself to resolve. The duration of the so-called protective period, unlike the evidentiary determination of which employees have

been adversely affected by the transfer, is a condition the justness and reasonableness of which only the Board itself is authorized by statute to determine.

6. Apart from the question of the duration of the compensatory benefits, we do not understand the Board's opinion as delegating to the arbitration tribunal any authority to reduce the compensation due for salary losses or moving expenses below the actual amount of the losses incurred except for proper "set-offs," such as unemployment compensation or other job compensation. If such is not the intent of the Board in its opinion, the objections heretofore advanced in paragraph 5 above with respect to the duration of the protective period apply with equal force for precisely the same reasons. If we are correct in our understanding of the Board's intent, we respectfully submit that this portion of the Board's opinion requires clarification in order that there will be no misunderstanding of the extent of the arbitration tribunal's authority.

7. Finally, we submit that paragraph 6 of the Board's Order requires modification or clarification to the extent that it might be interpreted as empowering the arbitration tribunal to make any determination as to whether employees, shown actually to have sustained monetary losses in the categories defined in paragraph 1(b) of the Board's Order, should or should not be compensated for such losses. The Board itself has already determined that question, which it alone has the author-

ity to determine, by its finding in its opinion which states:

“In the present case, we find that it would be just and reasonable and in the public interest to impose conditions providing in general that adversely affected employees shall be compensated for losses in the following categories * * *” (Emphasis supplied.) [3238]

Relief Requested

For the foregoing reasons, the Brotherhood respectfully requests that the following relief be afforded by the Board in this proceeding:

1. That the Board reconsider its Order Serial No. E-4444 of July 7, 1950, and upon such reconsideration modify or clarify said Order and the opinion of the Board thereto attached so that it is clearly provided that:

- a. All conditions for the protection of employees adversely affected, as limited by paragraph 1(b) of the Board's Order, by the transfer of Route 68 by Western to United, including the duration of the period of protection and the measure of the compensation to be accorded employees found to be so affected, are imposed by the Board itself and not delegated for determination by an arbitration tribunal;

- b. The jurisdiction of the arbitration tribunal is limited (1) to a determination of which employees are shown by evidence submitted to said tribunal to have incurred mone-

tary losses in the categories specified in paragraph 1(b) of the Board's Order; and (2) to a determination of what salary offsets, as defined in the Board's Order, should reduce the compensation to be paid such employees, based upon average monthly earnings during the twelve-month period immediately preceding the furlough or other termination of employment or reduction to a lower paying position;

c. The arbitration tribunal be expressly directed by the Board to utilize the provisions of the Burlington Formula in ascertaining the amount of compensation due an employee found to be adversely affected within the categories specified by the Board's Order.

2. That the Board grant such further hearing and reargument, including submission by the parties on brief and oral argument, as it considers essential to a proper development of the questions herein raised.

Respectfully submitted on behalf of the
Brotherhood of Railway and Steamship
Clerks by its Attorneys,

MULHOLLAND, ROBIE &
HICKEY,

/s/ EDW. J. HICKEY, JR.

Dated: September 21, 1950.

Received September 21, 1950. [3239]

Before the Civil Aeronautics Board

September 20, 1950.

[Title of Cause.]

PETITION OF WESTERN AIR LINES, INC.,
FOR REHEARING, REARGUMENT AND
RECONSIDERATION

Western Air Lines, Inc. (hereinafter referred to as "Western"), respectfully petitions for a rehearing, reargument and reconsideration of the Board's Opinion and Order, Serial No. E-4444, adopted July 7, 1950, in the reopened proceeding.

I.

Specification of Errors

1. The Board erred in finding that "some" Western employees were adversely affected by the transfer of Route 68.

2. The Board erred in attaching a condition precedent to the approval of the route sale three years after the sale [3247] of the route, and related equipment, was approved and the transfer completed pursuant to Board authority granted by its decision and order, Serial No. E-772, dated August 25, 1947.

3. The Board erred in ordering Western to submit to arbitration.

4. The Board erred in applying employee protective conditions in this case.

5. The Board erred in invoking the doctrine of estoppel against Western.

6. The Board erred in ignoring United and Western's motion to dismiss the Airline Mechanics Division, UAW-CIO, as a party to this proceeding for want of prosecution.

Received September 22, 1950. [3248]

United States of America
Civil Aeronautics Board
Docket No. 2839

Adopted by the Civil Aeronautics Board at its
Office in Washington, D. C., on the
29th Day of December, 1950.

[Title of Cause.]

ORDER No. E-4987

The prior proceedings in this case are recited in our original opinion, United-Western Acquisition of Air Carrier Property, 8 C.A.B. 298 (1947), and in our recent opinion on reconsideration, Serial No. E-4444, decided July 7, 1950.

In the order of July 7, on the basis of the findings set forth in the accompanying opinion, we made our approval of the transfer by Western Air Lines, Inc., (Western) to United Air Lines, Inc., (United) of Route 68 and related physical properties contingent upon compliance by Western with conditions providing for compensation to employees of Western for monetary losses in certain categories sustained as a result of such transfer. The identity of the individual employees entitled to such compensation and the amount of the losses sustained by them are, under the provisions of the

order, to be determined by agreement between Western and the employees concerned, or failing such agreement, by arbitration.

The order of July 7 is now challenged by petitions for reconsideration filed by Western and the Brotherhood of Railway and Steamship Clerks.

Western argues for the first time in its petition for reconsideration that the Board has no power to attach conditions to an approval of a transaction after that transaction has been consummated. We held in our [3310] opinion of July 7 that Western could not be heard to make that argument here because the Board in declining to include in the original order of approval protective conditions for the benefit of adversely affected employees expressly relied on testimony by Western's president that no such adverse effect would be suffered. The record shows that such adverse effect was suffered. Nothing in the petition for reconsideration warrants abandonment or modification of this view.

Indeed, further consideration of the problem has led to the conclusion that in addition to the estoppel ground relied on in the July 7 opinion, there is another basis on which we are authorized to impose protective labor conditions in this case, even though the transaction between Western and United has been consummated.

Our order of approval was issued on August 25, 1947. The time to apply for reconsideration under Board regulations expired on September 24, 1947. A timely petition for reconsideration was filed by the Air Line Pilots Association (ALPA) on Sep-

tember 23. The fact that the parties had consummated the transaction on September 15 could not and did not deprive the Board of power to reconsider the approval granted in the original order and to attach further conditions or indeed even to revoke such approval. In consummating the transaction prior to the expiration of the time for filing petitions for reconsideration and prior to the Board's disposition of those petitions, the parties acted at their own risk.

For this reason we believe we could impose the burden of protective conditions on United as well as Western. United in going ahead with the transaction prior to the expiration of the time for filing petitions for reconsideration assumed the risk that the Board would impose protective conditions. However, we still do not think it fair or equitable to United to impose on it a burden which arises not out of any change of mind on our part but out of the fact that the other party to the agreement testified as to facts which United had every reason to believe were reliable but which have subsequently proved to be incorrect.

Western argues that there is no way in which the Board can enforce its order of July 7 and compel Western to comply with the conditions. But it seems to us that we have the same power in this case as in any other. Failure by Western to comply with the conditions of the July 7 order would render inoperative the approval heretofore granted under sections 401(i) and 408(b) to the transfer to United of Route 68 and related physical prop-

erties. By refusing to comply with the conditions, Western would, unless it could undo the transaction with United, be placing itself in violation of sections 401(i) and 408(b) and would be subject to all the penal and enforcement provisions of the Act applicable to such violation. The fact that Western might find it impractical to undo the transaction would not be a defense because the failure to impose conditions in the original order of approval was due to the Board's reliance on testimony by Western's president and because by consummating the transaction prior to the expiration of the time fixed for reconsideration, Western went ahead at its own risk. [3311]

The other grounds of Western's petition have been considered and disposed of in the July 7 opinion and the petition for reconsideration sets forth no new material to warrant a modification of our findings therein.

The Brotherhood of Railway and Steamship Clerks in its petition for reconsideration requests modification of our order so as to provide for a complete determination by the Board of the formula on the basis of which adversely affected employees are to be compensated and a narrowing of the arbitrator's jurisdiction to a determination of specific claims.

Subsequent to the opinion of July 7, we had occasion in the North Atlantic Route Transfer Case (Supplemental Opinions dated September 22 and 25, 1950), to give extended consideration to the problem of what conditions should be imposed

for the protection of employees adversely affected by a route transfer or merger. In the light of that further consideration, we have re-examined the problem of protective conditions in this proceeding and have decided that it would be desirable to spell out definitely the basis on which adversely affected employees should be compensated and to leave to arbitration only the determination of individual claims.

In this connection, the principal problem is what should be the duration of the protective period during which monetary losses sustained as a result of the transfer of Route 68 and related physical properties to United should be recognized and compensated for. We think it clear that in no event should the period be longer than the period of time during which the employee was in the employ of Western prior to September 15, 1947, the date of consummation of the United-Western agreement. The Burlington Formula provides in addition that in no event should the protective period be longer than four years.

It seems to us that this four-year period, on the facts of this particular case, is too long. Although the record here does contain a sufficient showing of adverse effect to employees, it does not indicate that this adverse effect is likely to continue for any period of four years. It is true, of course, that if the harm does not last for four years, Western would not be liable therefor. But there would still be the burden and expense of litigating claims before an arbitration tribunal.

Accordingly, we have concluded that the maxi-

mum protective period should be something less than four years. Fixing any specific period is necessarily a matter of judgment, but it seems to us on the basis of the record before us that no appreciable harm is likely to have been sustained beyond a period of two years and that conversely a period of two years would not be an undue burden on Western. We have therefore provided that the protective period should not extend beyond September 15, 1949, a date two years subsequent to the consummation of the United-Western [3312] agreement. We wish to emphasize that we are not by this determination foreclosing the possibility that we will in the future adopt the four-year period of the Burlington Formula or some other period. A different record or a different set of general economic conditions might well persuade us that this provision of the Burlington Formula was a reasonable one.

We have also made clear in this order the manner in which compensation for loss of salary shall be determined and the setoffs which shall be taken into account. In connection with the matter of moving expenses, we have specified also what should be included in this category.

The disposition of the matter has made it necessary to rewrite paragraph 6 of the prior order. The second clause of that paragraph contained provisions with respect to claims for losses incurred subsequent to the date of the arbitration award. Since under the amendment contained in this order the protective period will not extend beyond Sep-

tember 15, 1949, this clause is no longer appropriate. Accordingly, it has been deleted.

The Air Line Pilots Association has filed, pursuant to paragraph 5 of our order, a motion requesting the Board to prescribe a method of selecting an arbitrator as well as the rule for the conduct of the arbitration. The motion discloses that Western's refusal to discuss these questions with ALPA has been based on the fact that it planned to file a petition for reconsideration. In view of this we will defer action on ALPA's motion until the labor organizations have had another opportunity to attempt to work out an agreement with Western on the method of selecting an arbitration tribunal and on the rules for the conduct of the arbitration.

We have also amended paragraph 7 of the order to make it clear that employees who entered the employ of Western subsequent to the consummation of the agreement with United are not entitled to recover any compensation under this order. Such employees obviously took their chances with the company as it stood at the time of their employment. We have also made it clear in amended paragraph 7 that employees who had not worked with Western for more than three months prior to sustaining a monetary loss as a result of the United-Western contract are not entitled to recovery. In view of the fact that the protective period as to such employees would be three months or less the amount of their claims would obviously be small and we do not think the arbitration tribunal should be burdened with them. Finally, we

have preserved the \$6500 limitation in former paragraph 7 but have followed the precedent in the North Atlantic Route Transfer Case (Order Serial No. E-4634, par. 17) and have excepted from the limitation meteorologists as well as flight personnel and dispatchers.

Accordingly, we find that it would be just and reasonable and in the public interest to impose the conditions set forth in Order Serial No. E-4444, as amended in the manner specified below. [3313]

It Is Therefore Ordered That:

1. Order Serial No. E-4444 be and it hereby is amended to include the following paragraph 1-A:

1-A. The amount of compensation for loss of salary for an employee of Western attributable to furlough or termination of employment shall be for each month of the protective period the average monthly compensation of such employee prior to furlough or termination of employment less the amount of earnings in other positions and the amount of unemployment insurance received by such employee during such month; however, no compensation shall be paid to any employee for any month (i) subsequent to the time when it appears that such employee failed to use reasonable diligence in locating and accepting other employment, the duties of which he was qualified to perform, or (ii) subsequent to the time when such employee failed without good cause to return to service after being notified by Western of a position, the duties of which he was qualified

to perform and for which he was eligible, or (iii) subsequent to the time of such employee's resignation, death, retirement on pension, or dismissal for good cause related to the individual conduct of such employee;

The amount of compensation for loss of salary for an employee of Western attributable to reduction to a lower paying position shall be for each month of the protective period a sum equal to the difference between the average monthly compensation of such employee prior to such reduction and the monthly compensation of such employee in the lower paying position in that month; this sum shall be reduced by an allowance for time lost during such month on account of voluntary absence at the rate of compensation applicable prior to reduction and shall be increased by an allowance for time worked during such month in excess of the average monthly time worked prior to reduction at the rate of compensation of the lower paying position; however, if any such employee has elected not to exercise his seniority rights, he shall not for any month subsequent to his failure to exercise such rights be entitled to any compensation;

The amount of compensation to a Western employee for moving expenses shall include the expenses of moving his household and other personal effects and the traveling expenses of the employee and his immediate family; [3314]

As used in the paragraph 1A:

The words "protective period" mean the period commencing with the date on which the employee was furloughed or terminated or reduced to a lower paying position and continuing for a length of time equal to that during which the employee was in the employ of Western prior to September 15, 1947, provided that in no event shall the protective period continue beyond September 15, 1949;

The words "average monthly compensation" mean the amount arrived at by dividing by twelve the total compensation received by an employee from Western in the last twelve months preceding the time of his furlough or termination or his reduction to a lower paying position during which he earned compensation; in the case of an employee who has worked less than twelve months for Western preceding the time of his furlough or termination or his reduction to a lower paying position, the words "average monthly compensation" shall mean the amount arrived at by dividing the total compensation received by such employee from Western preceding the time of his furlough or termination or his reduction to a lower paying position by the number of months during which compensation was earned by such employee prior to such furlough or termination or reduction to a lower paying position by the number of months during which compensation was earned by such em-

ployee prior to such furlough or termination or reduction to a lower paying position;

The words "average monthly time worked prior to reduction" mean the amount of time arrived at by dividing by twelve the total amount of time for which an employee was paid by Western in the last twelve months preceding the time of his reduction to a lower paying position during which he earned compensation; in the case of an employee who has worked less than twelve months for Western preceding the time of his reduction to a lower paying position the words "average monthly time worked" shall mean the amount of time arrived at by dividing the total amount of time for which such employee has been paid by Western preceding the time of his reduction to a lower paying position by the number of months during which compensation was earned by such employee prior to such reduction to a lower paying position;

2. Order Serial No. E-4444 be and it hereby is further amended to delete present paragraph 6 and insert the following new paragraph 6:

6. Claims on behalf of the employees for monetary losses in the categories described in paragraph 1 (b) above as a result of the transfer of Route 68 and related physical properties alleged to have been sustained prior to the conduct of the hearing by the arbitration tribunal shall be filed with the arbitration tribunal in such form and within such time as

that tribunal shall fix; failure to file a request for arbitration pursuant to [3315] paragraph 2 of this order shall not preclude the filing of a claim on behalf of an employee with an arbitration tribunal subsequently established at the request of other labor organizations or employees;

3. Order Serial No. E-4444 be and it hereby is further amended to delete present paragraph 7 and insert the following new paragraph 7:

7. The arbitration tribunal shall not entertain a claim on behalf of an employee who (i) had not been in the employ of Western at a time prior to September 15, 1947, or (ii) had not at some time prior to furlough or termination or reduction to a lower paying position been in the employ of Western for a period of at least three months, or (iii) at the time the alleged monetary loss was sustained was receiving from Western compensation at a rate in excess of \$6500 per annum provided that this last limitation shall not apply to flight personnel, meteorologists, or dispatchers;

4. The petitions for reconsideration of Western and the Brotherhood be and they hereby are in all other respects denied.

By the Civil Aeronautics Board:

[Seal] /s/ M. C. MULLIGAN,
Secretary.

Served December 29, 1950. [3316]

[Endorsed]: No. 12867. United States Court of Appeals for the Ninth Circuit. Western Air Lines, Inc., Petitioner, vs. Civil Aeronautics Board, Respondent. Transcript of the Record. Petition for Review of Orders of the Civil Aeronautics Board. Filed March 30, 1951.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12867

WESTERN AIR LINES, INC.,

Petitioner,

vs.

CIVIL AERONAUTICS BOARD,

Respondent.

CERTIFICATION OF TRANSCRIPT
OF RECORD

It Is Hereby Certified that, subject to the exceptions noted below, the annexed materials numbered from page 1 to page 3316, inclusive, constitute a true copy of the record upon which were entered the Board's Orders Serial Nos. E-4444, dated July 7, 1950, and E-4987, dated December 29, 1950, to-

[Title of Court of Appeals and Cause.]

PETITION OF WESTERN AIR LINES FOR
REVIEW OF ORDERS OF THE CIVIL
AERONAUTICS BOARD

To the Honorable Judges of the United States
Court of Appeals for the Ninth Circuit:

Western Air Lines, Inc., Petitioner (subsequently to be referred to as Western in the interests of conciseness), presents this petition for review of and to set aside an order of the Civil Aeronautics Board (subsequently to be referred to as the Board) dated July 7, 1950, Serial No. E-4444, and an order dated December 29, 1950, Serial No. E-4987, to the extent so far as the orders amend or make subject to additional terms and conditions an order of the Board dated August 25, 1947, Serial No. E-772.

I.

Summary of the Board's Actions

On March 7, 1947, Western filed an application under Sections 401, 408, and 412 of the Civil Aeronautics Act requesting approval of an agreement between Western and United Air Lines, Inc., (subsequently to be referred to as United), providing for the transfer by Western to United of the Certificate of Public Convenience and Necessity held by Western for Route No. 68, between Los Angeles and Denver, and the sale by Western to United of certain physical properties connected with that route and other allied matters.

On August 25, 1947, by its order Serial No. E-772 (8 CAB 298) the Board approved the agreement, and ordered that within twenty-one (21) days from that date an amended Certificate of Public Convenience and Necessity including Route 68 be issued to United.

On September 15, 1947—the date specified by the Board for the issuance to United of the amended Certificate of Public Convenience and Necessity—the transfer of the physical properties was effectuated and United commenced to operate the route without interruption of service.

Exactly one year after the Board's Order (E-772) approving the transaction, the Board by Order Serial No. E-1984, dated August 25, 1948, ordered the proceedings reopened to determine (1) whether any employees were adversely affected by the transfer and (2) what conditions, if any, for the protection of the employees adversely affected should be attached to the Board's order of approval. The order reopening the proceedings was made in response to a petition for reconsideration filed by the Air Line Pilots Association and the petition for leave to intervene and for reconsideration filed by the Air Line Mechanics Division, UAW-CIO, which petitions were both filed on September 24, 1947, nine days' after the transfer from Western to United of the certificate and the physical properties.

Two years and eleven months subsequent to the Board's decision approving the transaction, the Board issued its Order dated July 21, 1950, (E-4444), imposing employee protective conditions

on the original order of approval (E-777) dated August 25, 1947. On December 29, 1950, by Order Serial No. E-4987 the Board denied Western's petition for reconsideration of Order No. E-4444 dated July 7, 1950.

II.

Issues for Review

The issues to be resolved by the Court under this petition for judicial review are:

(1) Did the Board commit legal error by imposing employee protective provisions two years and ten months after the date specified in its original approving order (E-772) as the date for the issuance of the amended Certificate of Public Convenience and Necessity to United.

(2) Did the Board commit legal error by imposing employee protective provisions as a condition of the approval of the agreement between United and Western in view of the fact that the Civil Aeronautics Act of 1938, 52 Stat. 973, 49 U.S.C. 401, does not specifically provide for the imposition of such conditions.

(3) Did the Board commit legal error by imposing conditions modifying the original order (E-772) approving the transaction inasmuch as the Board did not purport to retain jurisdiction in that order.

(4) Did the Board commit legal error in delegating judicial power to an arbitrator.

(5) Did the Board commit legal error in imposing the onerous conditions subsequent only on Western, the transferror.

III.

Comment on Issues for Review

By its original order dated August 25, 1947, (E-772), the Board approved the contract between Western and United and approved the transfer of the physical properties involved. At the same time the Board ordered "that within twenty-one days of the date of this order" an amended Certificate of Public Convenience and Necessity be issued to United authorizing United to fly Route 68.

Pursuant to and in reliance on this order, the transfer of the properties was effectuated on September 15, 1947, the date set by the Board, and United undertook the operation of Route 68 which United is still operating. By its subsequent orders imposing employee protective conditions on the transaction the Board purported to impress conditions subsequent on a transfer that it had previously authorized rather than imposing conditions on its approval of a contemplated transfer. Nowhere in the Civil Aeronautics Act is such authority given to the board.

Section 401(i) of the Civil Aeronautics Act (49 U. S. Code U.S.C. 481(i)) provides "No certificate may be transferred unless such transfer is approved by the Board as being consistent with the public interest." Section 408(b), (49 U. S. Code 488(b)) provides in part "* * * it [the Board] shall by order, approve such consolidation, merger, purchase * * * upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe." These sections,

which are the only basis for the Board's power to impose any type of a condition, can not be construed to authorize the imposition of conditions on a transaction after it has been approved and consummated.

The infliction of conditions subsequent almost three years after the consummation of the approved transaction would deny to Western its right to abandon the proposed transfer because of oppressive and unacceptable conditions precedent. Violence would be done to the basic principles of justice if an administrative agency were empowered to lead a party into an inextricable position and then impose untenable conditions subsequent purportedly bearing the label of conditions precedent.

The issues involved in this petition for review are of major concern to the airline transportation industry. If in fact the law was intended by Congress to cloak the Board with the almost limitless power it arrogated in the orders under review, the industry should be forewarned to the end that other air carriers may not be led unwittingly into a similar position.

The legal points at issue will be dealt with at length in petitioner's Brief in the manner and style permitted and required by Rule 20 of the rules of this Court.

IV.

Basis for Jurisdiction

This petition is filed pursuant to Section 1006 of the Civil Aeronautics Act of 1938, 52 Stat. 973, 1024, 49 U.S.C. 401, 646, and Section 10 of the

Administrative Procedure Act, 60 Stat. 237, 243; 5 U.S.C., 1001, 1009.

Section 1006 of the Civil Aeronautics Act provides in part that any order issued by the Board shall be subject to review by the Circuit Court of Appeals for the Circuit wherein the petitioner resides or has his principal place of business or in the United States Court of Appeals for the District of Columbia.

The principal place of business of petitioner is in the City of Los Angeles, State of California.

V.

Relief Requested

Petitioner requests relief under this petition for review in the form of an order of this Court:

(1) Directing that the order of the Board dated July 7, 1950, Serial No. E-4444, and the order dated December 29, 1950, Serial No. E-4987, be set aside in such manner as to eliminate any employee protective conditions modifying the original order approving the transaction Serial No. E-772, dated August 25, 1947, and;

(2) Awarding petitioner such other redress as the law and record may justify.

Respectfully submitted,

GUTHRIE, DARLING &
SHATTUCK,

By /s/ HUGH W. DARLING,

Attorneys for

Western Air Lines, Inc.

February 22, 1951.

[Endorsed]: Filed February 23, 1951.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH PETITIONER INTENDS TO RELY ON PETITION FOR REVIEW

In response to Rule 19 (6) of the Rules of Practice of this Court, Petitioner declares that the points on which it intends to rely in support of its Petition for Review are:

I.

Respondent erred in imposing conditions for the benefit of employees of Petitioner claimed to have sustained certain types of monetary loss as a result of the voluntary transfer by Petitioner to United Air Lines, Inc., of the Certificate of Public Convenience and Necessity for Route No. 68 between Los Angeles and Denver, and the sale by Petitioner to United Air Lines, Inc., of certain properties connected with that route, the transfer and sale of which were unconditionally approved by Respondent and consummated [3328] under order of Respondent on September 15, 1947.

II.

Respondent erred in imposing sanctions against Petitioner in favor of existing or former employees of Petitioner.

III.

Respondent erred in imposing conditions subsequent, designated as conditions precedent, to its approval of the transfer by Petitioner of a Certificate of Public Convenience and Necessity and the sale of certain properties relating to the Certificate.

IV.

Respondent erred in imposing conditions to its approval of a voluntary transfer by Petitioner of a Certificate of Public Convenience and Necessity and the sale of related properties after the transfer and sale had been consummated and without ordering a rescission of the transfer and sale and the restoration of status quo.

V.

Respondent erred in imposing conditions to its approval of a voluntary transfer by Petitioner of a Certificate of Public Convenience and Necessity and the sale of related properties without affording Petitioner a reasonable, or any, opportunity to accept or reject the conditions.

VI.

Respondent erred in failing to issue its order of [3329] July 7, 1950, amending its order of August 25, 1947, with reasonable dispatch, as required by Section 9 (6) of the Administrative Procedure Act.

VII.

Respondent erred in submitting to arbitration, without the approval or acquiescence of Petitioner, judicial and quasi-judicial matters requiring the consideration and decision of Respondent.

VIII.

Respondent erred in imposing conditions to its approval of a transfer by Petitioner of a Certificate of Public Convenience and Necessity and related properties only against Petitioner, the transferor and vendor.

IX.

Respondent erred in ignoring the preponderance of the evidence in the record and in disregarding the legal rights of Petitioner.

April 17, 1951.

GUTHRIE, DARLING &
SHATTUCK,

By /s/ HUGH W. DARLING,
Attorneys for Petitioner.

Affidavit of Service attached.

[Endorsed]: Filed April 18, 1951. [3330]

[Title of Court of Appeals and Cause.]

DESIGNATION BY PETITIONER OF THE
PARTS OF THE RECORD WHICH ARE
BELIEVED TO BE MATERIAL FOR CON-
SIDERATION ON REVIEW AND WHICH
SHOULD BE INCLUDED IN THE
PRINTED RECORD

In response to Rule 19 (6) of the Rules of Prac-
tice of this Court, Petitioner designates those parts
of the record which appear to be material to the
consideration of the review and which should be
included in the printed record as:

Description of Document

Pagination of Record on Review Pagination of Original Document

Volume 1

Application of Western Air Lines and United Air Lines for order approving sale of certain properties and transfer and amendment of a certificate of public convenience and necessity, filed March 7, 1947, excluding the itemized inventory attached to and marked Exhibit "A" to the agreement between Western and United, which agreement is Exhibit "A", to the application.....	Com. on 1
Petition for leave to intervene filed by Air Line Pilots Association.....	1-5 (1-4 Ex. A)
Report of prehearing conference, served March 27, 1947.....	1-11
Portion of transcript of hearing of May 20-22, 1947, (pages 156-631 of record) consisting of the questions to and answers by Mr. T. C. Drinker, in Volume 1, commencing on line 12, page 106, thru line 20, page 110	1-5 (and App. A)

106-110

Volume 2

Question and answer No. 8 in the exhibit submitted by Petitioner marked "WT-1," commencing on line 17, page 10, to the end of the page.....	10
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Description of Document	Pagination of Record on Review	Pagination of Original Document
<u>Volume 3</u>		
Order E-598, dated June 6, 1947, granting petitions of Western and United for initial decision by the Board.....	1256-1259	1-2
<u>Volume 4</u>		
Opinion and Order E-772, dated August 25, 1947.....	1739-1843	i-iii and 1-43 plus App. A and attached orders.
Orders dated September 11, 1947, correcting error in Order E-772 (E-792) and reissuing United Air Lines' certificate for Route No. 1 (E-793).....	1911-1919	1-2 1-2 plus attached certificate. 1-16 plus attachment.
Petition of Air Line Pilots Association for reconsideration of Order E-772.....	1920-1937	1-6 plus verification and Exhibit "A,"
Petitions of Airline Mechanics Division, UAW-CIO, for (1) leave to intervene and (2) reconsideration of Order E-772.....	1939-1949	1-5
Petition of Brotherhood of Railway and Steamship Clerks for permission to file out of order a request for reconsideration of Order E-772.....	1981-1986	1-4
Order E-1894, dated August 25, 1947, dealing with the petitions of labor organizations for reconsideration, intervention and stay of Order E-772.	1987-1991	465-792
Transcript of reopened hearing, November 14-15, 1949.....	2027-2361	

Description of Document	Pagination of Record on Review	Pagination of Original Document
<u>Volume 5</u>		
Transcript of reopened hearing, November 16-17, 1949.....	2362-2551	793-978
<u>Volume 6</u>		
Opinion and Order E-4444, dated July 7, 1950.....	3191-3217	1-22 and attached order.
<u>Volume 7</u>		
Order E-4987, dated December 29, 1950.....	3309-3316	1-7
Petition of Western Air Lines for review of orders of the Civil Aeronautics Board in this proceeding.....		1-8
Petitioner's statement of points on which it intends to rely in support of its Petition for Review.....		1-3
This designation of those parts of the record which appear to be material to the consideration of the review.....		1-4

April 17, 1951.

GUTHRIE, DARLING &
SHATTUCK,

By /s/ HUGH W. DARLING,
Attorneys for Petitioner.

Affidavit of Service attached.
[Endorsed]: Filed April 18, 1951.

[Title of Court of Appeals and Cause.]

ORDER

The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, acting on their own behalf and on behalf of certain employees of the above-named petitioner, has moved for leave to intervene and to become a party respondent in the above-entitled proceedings.

It appears from the record filed here with the Petition for Review of the Board's Order that the Brotherhood was permitted to intervene and become a party to the proceedings before the Board. It would appear therefore that upon this petition for a review of those proceedings the Brotherhood is a party and is entitled to be heard in this Court. As we regard the making of the present Motion unnecessary for that purpose, the Motion is denied.

HOMER T. BONE,

WILLIAM E. ORR,

WALTER L. POPE,

Circuit Judges.

[Endorsed]: Filed April 23, 1951.

United States Court of Appeals
for the Ninth Circuit

No. 12,867

WESTERN AIR LINES, INC.,

Petitioner,

vs.

CIVIL AERONAUTICS BOARD,

Respondent.

May 25, 1951

Before: Bone, Orr and Pope,
Circuit Judges.

Pope, Circuit Judge.

OPINION UPON MOTION FOR LEAVE
TO INTERVENE

On April 23, 1951, this court made an order upon the motion of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, for leave to intervene herein. In that order the court noted that the Brotherhood was permitted to intervene and become a party to the proceedings before the Board, and found that the Brotherhood is a party and is entitled to be heard in this court upon the pending petition for a review of the Board's proceedings. Accordingly, motion for leave to intervene was denied as unnecessary.

It has now been suggested that although neither the petitioner nor the Board has interposed any objection to the Brotherhood being heard in this

court or in these proceedings, yet the Board is fearful lest the form in which the court's order was made should be taken to establish as a rule of procedure that anyone permitted to intervene in a similar proceeding before the Board, would by virtue of that fact necessarily be entitled to recognition as a party to any proceeding to review an order issued by the Board, and even be deemed entitled to petition for review.

Necessarily the court's previous order had reference solely to the facts of this particular matter in which it was apparent that the Brotherhood had a substantial interest in the order here under review. The order of this court was made in the light of the fact and was not intended to establish a rule of practice or procedure in subsequent matters in this court.

We think that the suggestion that it would have been better to grant the Brotherhood's motion to intervene involves a mere question of appropriate nomenclature. Ordinarily intervention in a proceeding is sought only by one who has not theretofore been a party. "An 'intervention' is a proceeding by one not theretofore a party." *Ex Parte Green*, 221 Ala. 415, 129 So. 69. For this reason intervention in an appellate court is inappropriate. *Wenborne-Karpen Dryer Co. v. Cutler Dry Kiln Co.* (2 cir.), 292 F. 861; *The William Bagaley*, 5 Wall. 377, 411-412.

Because the proceedings before us are limited to a review of the action of the Board, we would consider it inappropriate to permit one who had

not been a party to the proceeding before the Board to intervene here for the first time and to make arguments or press points which it had not previously presented to the Board. Cf. *Willipoint Oyster v. Ewing* (9 cir.), 174 F. 2d 676, 692.

Of course it would be in order for the Brotherhood to make application for leave to file a brief or otherwise be heard as *amicus curiae*. But we understand that the Brotherhood seeks more than that. What it desires is to be recognized as a party to these review proceedings. Under the provisions of Title 5 USCA § 1009(e), the court is charged with reviewing such portions of the record "as may be cited by any party." The Brotherhood seeks to be recognized as such a party.

Title 5 § 1001(b), after defining a "party" to an administrative proceeding, provides "but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes." Our attention has now been called to the fact that the Civil Aeronautics Board has done just that by their Rules of Practice § 302.6 (b) (3), which provides that: "Interventions provided in this section are for administrative purposes, and no decision to grant leave to intervene shall be deemed to constitute a finding or determination that the intervening party has such a substantial interest in the order that is to be entered in that proceeding as will entitle it to demand court review of such order."

The court considers the petition for "intervention," so called, to be in substance a petition on the

part of the Brotherhood to be recognized as a party entitled to be heard in this proceeding. Because it appears to the court that the Brotherhood was admitted as a party to the proceedings before the Board and presented its claims there, that the Brotherhood has a substantial interest in the proceeding, and that it is entitled to be heard herein, the Brotherhood will be so recognized.

[Endorsed]: Opinion upon Motion to Intervene.
Filed May 25, 1951. Paul P. O'Brien, Clerk.

Orders

Serial Number E-792

United States of America, Civil Aeronautics Board
Washington, D. C.

Docket No. 2839

Adopted by the Civil Aeronautics Board at Its Office
in Washington, D. C., on the 11th Day of Sep-
tember, 1947.

In the Matter of:

The Application of WESTERN AIR LINES,
INC., and UNITED AIR LINES, INC., Under
Sections 401, 408 and 412 of the Civil Aero-
nautics Act of 1938, as Amended, for an Order
Approving an Agreement for the Sale of Cer-
tain Properties and the Transfer and Amend-
ment of a Certificate of Public Convenience
and Necessity

ORDER AMENDING ORDER

A full public hearing having been held in the
above-entitled proceeding;

The Board, upon consideration of the record,
having issued its opinion containing its findings,
conclusions, and decision, and in accordance with
said opinion having issued its Order, Serial Num-
ber E-772, dated August 25, 1947, as amended by
Order Serial No. E-786, dated September 10, 1947,
and

The Board finding that paragraph 3 of said Order
Serial No. E-772, as amended, inadvertently re-

ferred to the amended certificate of public convenience and necessity for Route No. 1 issued to United Air Lines, Inc., pursuant to Order Serial No. E-556, dated May 19, 1947, rather than to the currently effective amended certificate for Route No. 1; and that since the adoption of Order Serial No. E-772 the Board, by Order Serial No. E-783, dated September 3, 1947, in the Great Lakes Area Case, Docket No. 535, et al., authorized the issuance of an amended certificate of public convenience and necessity to United Air Lines, Inc., for Route No. 1;

It Is Ordered: That paragraph numbered "3" of Order Serial No. E-772, dated August 25, 1947, as amended, be further amended in its entirety to read as follows:

"3. Within twenty-one days of the date of this order, the amended certificate of public convenience and necessity of United Air Lines, Inc., then currently in effect for Route No. 1 shall be further amended to authorize the holder to engage in air transportation with respect to persons, property and mail between the terminal point Los Angeles, Calif.; the intermediate points Las Vegas, Nev.; Grand Junction, Colo.; Denver, Colo.; North Platte, Nebr.; Grand Island, Nebr.; Lincoln, Nebr.; Omaha, Nebr.; Des Moines, Iowa; Cedar Rapids, Iowa; Iowa City, Iowa; Moline, Ill.; Milwaukee, Wis.; Chicago, Ill.; South Bend, Ind.; Fort Wayne, Ind.; Toledo, Ohio, and (a) beyond Toledo, Ohio, the intermediate points Detroit, Mich.; Sandusky, Ohio; Cleveland, Ohio; Akron, Ohio; Youngstown, Ohio; Allentown, Pa.; Philadelphia, Pa., and the co-

terminal points New York, N. Y., and Newark, N. J., and (b) beyond Toledo, Ohio, the intermediate points Detroit, Mich.; Sandusky, Ohio; Cleveland, Ohio; Hartford, Conn., and the terminal point Boston, Mass., and (c) beyond Toledo, Ohio, the terminal point Washington, D. C. (said authorization as to Sandusky, Ohio, to expire on September 4, 1950, at 12:01 a.m.); subject to the terms, conditions, and limitations contained in said currently effective amended certificate and to a further restriction prohibiting United Air Lines, Inc., from engaging in local air transportation between Los Angeles, Calif., and Las Vegas, Nev.; and''

By the Civil Aeronautics Board:

[Seal] /s/ M. C. MULLIGAN,

M. C. MULLIGAN,
Secretary.

[Title of Board and Cause.]

SUPPLEMENTAL ORDER

Pursuant to Order Serial No. E-772, dated August 25, 1947, as amended, by Order Serial Nos. E-786 and E-792, dated September 10, 1947, and September 11, 1947, respectively;

It Is Ordered:

1. That effective September 15, 1947, at 12:01 a.m., Pacific Coast Standard Time, the certificate of public convenience and necessity for Route No. 68 issued to Western Air Lines, Inc., pursuant to

Order Serial No. 3263, dated November 11, 1944, be and it is hereby cancelled;

2. That the certificate of public convenience and necessity for Route No. 1 issued to United Air Lines, Inc., pursuant to Order Serial No. E-783, dated September 3, 1947, be amended and issued in the form attached hereto;

3. That said amended certificate shall be signed on behalf of the Board by its Chairman, shall have affixed thereto the seal of the Board attested by the Secretary, and shall be effective on September 15, 1947, at 12:01 a.m., Pacific Coast Standard Time.

4. As of 12:01 a.m., Pacific Coast Standard Time, all authorizations by the Board then in effect to render scheduled nonstop service between points on Route No. 68 and all authorizations by the Board then in effect to serve regularly any point on Route No. 68 through an airport convenient thereto shall be deemed to be transferred to United Air Lines, Inc.

By the Civil Aeronautics Board:

[Seal] /s/ M. C. MULLIGAN,

M. C. MULLIGAN,
Secretary.

United States of America, Civil Aeronautics Board
Washington, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY

(As Amended)

United Air Lines, Inc.,
is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Civil Aeronautics Act of 1938, as amended, and the orders, rules, and regulations issued thereunder, to engage in air transportation with respect to persons, property, and mail, as follows:

(1) Between the terminal point Seattle, Wash.; the intermediate points Tacoma, Wash.; Portland, Oreg.; The Dalles, Oreg.; Pendleton, Oreg.; Boise, Idaho; Twin Falls, Idaho; Salt Lake City, Utah; Ogden, Utah; Rock Springs, Wyo.; Cheyenne, Wyo.; Denver, Colo.; North Platte, Nebr.; Grand Island, Nebr.; Lincoln, Nebr.; Omaha, Nebr.; Des Moines, Iowa; Cedar Rapids, Iowa; Iowa City, Iowa; Moline, Ill.; Milwaukee, Wis.; Chicago, Ill.; South Bend, Ind.; Fort Wayne, Ind.; Toledo, Ohio, and (a) beyond Toledo, Ohio, the intermediate points Detroit, Mich.; Sandusky, Ohio; Cleveland, Ohio; Akron, Ohio; Youngstown, Ohio; Allentown, Pa.; Philadelphia, Pa., and the co-terminal points New York, N. Y., and Newark, N. J., and (b) beyond Toledo, Ohio, the intermediate points Sandusky, Ohio; Cleveland, Ohio; Hartford, Conn., and the terminal point Boston, Mass., and (c) beyond

Toledo, Ohio, the terminal point Washington, D. C. (said authorization as to Sandusky, Ohio, to expire on September 4, 1950, at 12:01 a.m.);

(2) Between the intermediate point Pendleton, Oreg.; the intermediate point Walla Walla, Wash., and the terminal point Spokane, Wash.;

(3) Between the intermediate point Pendleton, Oreg., and the terminal point Seattle, Wash.;

(4) Between the intermediate points Boise, Idaho; Reno, Nev., and Sacramento, Calif., and the terminal point San Francisco, Calif.;

(5) Between the terminal point Oakland, Calif.; the intermediate points San Francisco, Calif.; Sacramento, Calif.; Reno, Nev.; Elko, Nev.; Salt Lake City, Utah; Ogden, Utah; Rock Springs, Wyo.; Cheyenne, Wyo.; Denver, Colo.; North Platte, Nebr.; Grand Island, Nebr.; Lincoln, Nebr.; Omaha, Nebr.; Des Moines, Iowa; Cedar Rapids, Iowa; Iowa City, Iowa; Moline, Ill.; Milwaukee, Wisc.; Chicago, Ill.; South Bend, Ind.; Fort Wayne, Ind.; Toledo, Ohio, and (a) beyond Toledo, Ohio, the intermediate points Detroit, Mich.; Sandusky, Ohio; Cleveland, Ohio; Akron, Ohio; Youngstown, Ohio; Allentown, Pa.; Philadelphia, Pa., and the co-terminal points New York, N. Y., and Newark, N. J., and (b) beyond Toledo, Ohio, the intermediate points Detroit, Mich.; Sandusky, Ohio; Cleveland, Ohio; Hartford, Conn., and the terminal point Boston, Mass., and (c) beyond Toledo, Ohio, the terminal point Washington, D. C. (said authorization as to Sandusky, Ohio, to expire on September 4, 1950, at 12:01 a.m.);

(6) Between the terminal point Los Angeles, Calif.; the intermediate points Las Vegas, Nev.; Grand Junction, Colo.; Denver, Colo.; North Platte, Nebr.; Grand Island, Nebr.; Lincoln, Nebr.; Omaha, Nebr.; Des Moines, Iowa; Cedar Rapids, Iowa; Iowa City, Iowa; Moline, Ill.; Milwaukee, Wis.; Chicago, Ill.; South Bend, Ind.; Fort Wayne, Ind.; Toledo, Ohio, and (a) beyond Toledo, Ohio, the intermediate points Detroit, Mich.; Sandusky, Ohio; Cleveland, Ohio; Akron, Ohio; Youngstown, Ohio; Allentown, Pa.; Philadelphia, Pa., and the co-terminal points New York, N. Y., and Newark, N. J., and (b) beyond Toledo, Ohio, the intermediate points Detroit, Mich.; Sandusky, Ohio; Cleveland, Ohio; Hartford, Conn., and the terminal point Boston, Mass., and (c) beyond Toledo, Ohio, the terminal point Washington, D. C. (said authorization as to Sandusky, Ohio, to expire on September 4, 1950, at 12:01 a.m.);

(7) Between the terminal point Seattle, Wash.; the intermediate points Tacoma, Wash.; Portland, Oreg.; Salem, Oreg.; Eugene, Oreg.; Bend, Oreg.; Medford, Oreg.; Eureka, Calif.; Klamath Falls, Oreg.; Red Bluff, Calif.; Sacramento, Calif.; Oakland, Calif.; San Francisco, Calif.; Stockton, Calif.; Modesto, Calif.; Merced, Calif.; Salinas, Calif.; Monterey, Calif.; Fresno, Calif.; Visalia, Calif.; Bakersfield, Calif.; Santa Barbara, Calif.; Los Angeles, Calif.; Long Beach, Calif., and the terminal point San Diego, Calif.,

to be known as Route No. 1.

The service herein authorized is subject to the following terms, conditions, and limitations:

(1) The holder shall render service to and from each of the points named herein, except as temporary suspensions of service may be authorized by the Board; and may begin or terminate, or begin and terminate, trips at points short of terminal points.

(2) The holder may continue to serve regularly any point named herein through the airport last regularly used by the holder to serve such point prior to the date of issuance of this certificate, as amended; and may continue to maintain regularly scheduled nonstop service between any two points not consecutively named herein if nonstop service was regularly scheduled by the holder between such points on the date of issuance of this certificate, as amended. Upon compliance with such procedure relating thereto as may be prescribed by the Board, the holder may, in addition to the service hereinabove expressly prescribed, regularly serve a point named herein, through any airport convenient thereto, and render scheduled nonstop service between any two points not consecutively named herein between which service is authorized hereby.

(3) The holder shall not be authorized to regularly schedule nonstop service between Twin Falls, Idaho; Boise, Idaho; Pendleton, Oreg.; The Dalles, Oreg.; Portland, Oreg.; Tacoma, Wash.; Seattle, Wash.; Walla Walla, Wash., or Spokane, Wash., as one of the two points between which such service

is rendered, and points east of Salt Lake City, Utah, as the other of the two points between which such service is rendered, except between Twin Falls, Idaho, or Boise, Idaho, and either Cheyenne, Wyo.; Denver, Colo., or Rock Springs, Wyo.

(4) The holder shall not service Milwaukee, Wis., on flights serving Chicago, Ill.; Detroit, Mich., or Washington, D. C.

(5) The holder shall serve Milwaukee, Wis., only on flights originating at Omaha, Nebr., or a point west thereof, and terminating at Cleveland, Ohio, or a point east thereof, or originating at Cleveland, Ohio, or a point east thereof, and terminating at Omaha, Nebr., or a point west thereof.

(6) The holder shall serve at least one intermediate point east of Milwaukee, Wis., on all flights serving Milwaukee, Wis., and New York, N. Y., or Milwaukee, Wis., and Newark, N. J.

(7) The holder shall serve Detroit, Mich., only on flights originating at Denver, Colo., or a point west thereof, and terminating at New York, N. Y., or originating at New York, N. Y., and terminating at Denver, Colo., or a point west thereof.

(8) The holder shall not serve Detroit, Mich., and Cleveland, Ohio, by the same flight.

(9) The holder shall render scheduled nonstop service between Chicago, Ill., and Washington, D. C., and between Chicago, Ill., and Boston, Mass., only on flights originating or terminating at Omaha, Nebr., or a point west thereof.

(10) The holder shall not serve Klamath Falls, Oreg., and Medford, Oreg., by the same flight.

(11) The holder shall not serve Bend, Oreg., and Eugene, Oreg., by the same flight.

(12) The holder shall not serve Fort Wayne, Ind., on flights serving Detroit, Mich., or Toledo, Ohio.

(13) The holder shall not engage in local air transportation between Las Vegas, Nev., and Los Angeles, Calif.

(14) In the operation of any nonstop flight authorized herein, the holder shall not make operational stops, unless caused by an emergency or considerations of safety arising during such flight, at any point not named between the two terminals of such flight in a certificate of public convenience and necessity of the holder.

The exercise of the privileges granted by this certificate, as amended, shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate, as amended, shall be effective on the 15th day of September, 1947, at 12:01 a.m., Pacific Coast Standard Time.

In Witness Whereof, the Civil Aeronautics Board has caused this certificate, as amended, to be executed by its Chairman and the seal of the Board to

John T. Lorch, Mayer, Meyer, etc., 231 S. La Salle St., Chicago, Ill.

Research Dept., c/o United Air Lines, Inc., 5959 S. Cicero Ave., Chicago 59, Ill.

Special Messenger:

Burgess—POD.

Delany—POD.

Bulletin Board.

Docket Section.

Stough.

Leasure.

Examiner: Wrenn B-101.

Public Counsel: Highsaw B-38, Kennedy B-38.

/s/ C.F.W.,

Chief, Docket Section.

